



REQUEST FOR PROPOSAL

for **JHIRK MULLAH KATIYAR BRIDGE**

on Design, Build, Finance, Operate & Transfer Basis



Background

The Works & Services Department in association with the Public Private Partnership ("PPP") Unit, Government of Sindh, invites proposals from reputable and experienced road operators, developers and investors (in consortium) with reputable civil contractor having experience of constructing long bridges and roads with the requisite capabilities defined below in the eligibility criteria. The envisioned PPP Procurement structure is a Design, Build, Finance, Operate and Transfer (Annuity Based) Model.

Scope of Work

The selected bidder will be responsible for the following:

1. Construction of 25km single lane carriageway including 1.2 km long Bridge over Indus River.
2. Detailed Design, Finance & Construction of the road and bridge and related facilities
3. Operation & Maintenance of the road in conformity with AASHTO standards during the envisaged concession period
4. Transfer the Project and its related assets to the GoS upon completion of the concession period

Proposed Financial Structure

- **Equity** **25%**
 - (Private Partner Equity minimum 13%)
 - (Govt. of Sindh equity maximum 12%)
- **Commercial Loan** **75%**

The Interested Firms/Consortium shall ensure that they meet the eligibility criteria before downloading the Request for Proposal ("RFP") from the given website.

Eligibility Criteria

1. The bidder must demonstrate concrete availability of financial resources in the form of bank guarantee to the tune of PKR. 500 million to inject as equity in this project.
2. Member of consortium or individual must be registered with Pakistan Engineering Council and shall have a valid registration certificate in category (no limit).
3. Consortium Member must have completed at least three road construction contracts within last seven years, each with a value of at least PKR 400 Million or equivalent that have been successfully or are substantially completed
4. Consortium Member must have completed at least three construction contracts for bridges within last five years having length not less than 300 meters and at least one bridge of over 500 meters length that have been successfully or are substantially completed.
5. Consortium Member has an average annual construction turnover amount of at least PKR 500 Million during last three years.

Submission of Proposals

The proposals are to be delivered in a sealed envelope on the following address:

Mushtaque Hussain Memon

Project Manager,
Jhirk Mullah Katiyar Bridge Project
Email: mushtaque1@yahoo.com,
Phone# 021-99203120

The Request for Proposal (RFP) alongwith Draft Concession Agreement shall be available on the below mentioned websites from December 13, 2011.

www.pppunitsindh.gov.pk | www.spprasindh.gov.pk

For further information please contact:

Mr. Naveed Rajput, Assistant Director-I
PPP Unit, Finance Department, Government of Sindh.
Barrack No. 17, Sindh Secretariat No.4-A, Court Road, Karachi. Contact: 021-99207756

The proposals must be submitted no later than **31st January, 2012** by 1600 PST.



**Volume 1 :Request for Proposal
(RFP)
Jhirk Mulla Katiyar Bridge Project**



**Works and Services Department
Government of Sindh**



**Public Private Partnership Unit
Finance Department
Government of Sindh**



Jhirk Mulla Katiyar Bridge Project

Reference: Jhirk Mulla Katiyar Bridge Project

Dear Bidder,

The Works and Services Department Government of Sindh ("GoS"), in association with the Public Private Partnership ("PPP") Unit of the Finance Department, GoS hereby invites proposals from Bidders.

This RFP represents the process of selecting a Private Partner with whom the GoS intends to sign a Concession Agreement for the Design, Build, Finance, Operate and Transfer a 25 km road and Bridge of 1.2 km connecting National Highway (N5) via Jhirk to Tando Muhammad Khan Bathoro Road (the "**Project**"). It is currently envisaged that the contract term will be for a period of approximately 27 years. The Project (including the ownership of the Project related assets) shall be handed over to GoS at the end of the contract period.

In order for a Proposal to be evaluated, Bidders must meet all of the eligibility requirements stated herein.

The key dates in this stage of the selection process are as follows:

Pre-bid Conference	30 th Dec 2011
Submission of Proposal	31 st Jan 2012
Concession Agreement signing	28 th Feb 2012
Financial Close	30 th Jun 2012
Concession period	
Anticipated start of design	01 st Mar 2012
Anticipated end of design	30 th May 2012
Anticipated start of construction	01 st June 2012
Anticipated end of construction	30 th Jun 2014
Anticipated expiry of Concession Agreement & handover of facilities	30 th June 2039



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Two (2) complete hard copies and one (1) complete soft copy of the technical and financial proposal (including the Financial model in Excel spreadsheet) and other supporting documents form (on CD/ DVDs) must be delivered no later than **4:00 p.m. PST** on Jan 31, 2012 as per the guidelines given in the Data sheet.

The Proposals will be evaluated by a Technical and Financial Evaluation Committee (“TFEC”), comprising of GoS officials and consultants and may comprise private members as the case may be.,

We would like to thank the Bidders for their interest in this important project. Moreover, we would request them to evaluate themselves under the following eligibility criteria as ineligibility under the following criteria would make the proposal of the firm/ consortium non-compliant.

Eligibility Criteria

- Financial resource in the form of bank guarantee to the tune of PKR 500 million
- Registration with Pakistan Engineering Council
- At least 3 road projects of at least PKR 400 million worth each in the last 7 years
- At least 3 bridge projects of at least 300 meter length each and at least one of them being of 500 meter length in the last 5 years
- Average annual construction turn-over of PKR 500 million

Sincerely

Project Manager,
Jhirk Mulla Katiyar Bridge Project
Email: mushtaque1@yahoo.com,
Phone# 021-99203120
Address: Barrack No. 1, Secretariat 4-A, Court Road, Karachi
Pakistan



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IMPORTANT NOTICE

The Request for Proposal ("RFP") is provided to the recipient solely for use in preparing and submitting Proposals for participation in the competitive process for Design, Build, Finance, Operate and Transfer the Jhirk-Mulla Katiyar Bridge in PPP mode (the "Project") for a term of approximately 27 years. The RFP is being issued by the Works and Services Department, GoS, in association with PPP Unit, Finance Department, GoS solely for use by prospective private partner in considering the Project.

The evaluation criteria were determined by the TFEC with the technical assistance of PPP Unit. The Proposal and bids will be evaluated by a TFEC composed of government officials of the GoS. The committee will exercise these responsibilities in a fair and transparent manner, without preferential treatment or bias towards any applicant or Bidder.

None of the above entities, nor their employees make any representation (expressed or implied) as to the accuracy or completeness of the information contained herein, in or any other document made available to any person in connection with the tender process for the Project and shall have no liability for this RFP or for any other written or oral communication transmitted to the recipient in the course of the recipient's evaluation of the Project. Neither these entities nor their employees will be liable to reimburse or compensate the recipient, for any costs or expenses incurred by the recipient in evaluating or acting upon this RFP or otherwise in connection with the Project as contemplated herein.

The RFP does not constitute a solicitation to invest, or otherwise participate, in the Project.



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GLOSSARY

Term	Meaning
Activities	All activities of the Private Partner or any of its representatives, agents, employees, suppliers, contractors, or sub-contractors in the course of performing the Private Partner’s obligations under the Concession Agreement.
Anticipated Expiry Date	The date on which Concession rights will expire.
Annuity Payments	The annual payment starting from first year of operations that GoS has to make to the Concessionaire on a quarterly basis against satisfactory services rendered under agreement; it shall constitute : <ul style="list-style-type: none"> a) the agreed Operations & Maintenance expense for that year; b) the Debt payment amount for that year (including the Principal repayment and interests payment) ; and c) the agreed amount for that year to fulfil the equity return
Benchmark Interest Rate	The benchmark rate for Loans used by a Bidder in developing its financial proposal. It must represent an interest rate for financing in Pakistan, such as KIBOR, for a specified term. The Benchmark Interest Rate must be expressed as a percentage to two decimal places and be independently verifiable.
Bidder	An enterprise or consortium that submits bid in response to this RFP.
Bidder’s Collaborator	The Bidder, a Member or Participant of the Bidder, any of their respective authorized officers, directors, managers, employees, supervisors, sub-contractors, consultants, advisors, representatives, agents, successors, and respective assigns, the Lenders and the Bidder’s Key Individuals
Claims	Claims, legal action, lawsuits, grounds for action, debts, royalties, accounts, bonds, guarantees, actions for contribution, indemnity, commitments, contracts, losses (including indirect losses), damages, costs, grievances, enforcement, rulings, obligations, debts (including those related to or stemming from a lost opportunity), demands, and rights of any nature whatsoever, whether actual, pending, potential, or possible, legal, express or implicit, present or future, and known or unknown.
Compliant Proposal	Any Proposal that (i) meets the eligibility requirements specified in Section 2.6(ii) in the reasonable opinion of the TFEC, meets or surpasses all of the mandatory requirements for a proposal specified in this RFP, (iii) meets the requirements of the RFP sufficiently and in such a manner that the Proposal would be considered to be complete, competitive, and submitted in good faith by a Bidder who intends to fulfil all the requirements of this RFP;(iv) in the reasonable opinion of the TFEC, is sufficiently detailed and complete that, if the TFEC decides that the Proposal is compliant, it believes that the Financial Close based on that Proposal could occur within the timeframe specified in the RFP; and (v) meets the eligibility criteria as mentioned at the start of this RFP.
Concession Agreement	The Concession Agreement sets forth the detailed terms and conditions for the grant of the concession to the Concessionaire and contains, among other things,



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	the technical specifications for the design, construction, operations, maintenance and transfer components of the Project; the scope of the services to be provided by the Concessionaire and obligations (“the Concession”), the end of term requirements and other commercial terms.
Consortium	A group of two or more enterprises formed to submit a Proposal, and if applicable, to carry out the Concession
Consultation and Selection Process	A process that includes this RFP, consultation with Bidders, attendance at pre-bid conferences, issuance of a draft or revised version of the Concession Agreement, receipt and consideration of comments from Bidders and information provided in response to a request from the GoS, evaluation of the proposals submitted in response to this RFP, the selection of a Preferred Bidder, preparation, negotiation, acceptance, or rejection of any Proposal, amendment, cancellation, interruption, or termination of the RFP, Project, or Concession, and execution of the Concession Agreement
Equity	An interest representing a right of ownership in the Company incorporated to under-take the Project. This includes amounts invested upon the incorporation of or subsequently during the life of the Concession. Refer to the detailed definition in the Concession Agreement
Equity Holders	Some or all of the individuals or legal persons who are participating or committed to participate in financing the Private Partner’s Activities in the form of equity. These shall include: <ul style="list-style-type: none"> • Investors who invest their own funds or funds under management; • A firm underwriter, acting alone or as a syndicate representative, that underwrites an equity offering and assumes responsibility for its distribution to investors, subject to the terms of a firm underwriting agreement.
Equity Internal Rate of Return	Projected blended rate of after-tax return of the Class A share equity in the Private Partner. This rate is nominal and takes into account the income tax of the Private Partner.
Final Completion Date	The date on which the certificate of final completion “Completion Certificate” is issued by the Independent Engineer.
Financial Close	Stage in a financial agreement where conditions of the Financing agreements and the Concession Agreement have been satisfied or waived, documents executed, and draw-downs become permissible that is the use of funds may begin.
Financing Instruments	Any contract that creates a financial liability or equity instrument.
Government/ Client	Government of Sindh / GoS / The Authority/ Works & Services Department.
GoS’s Representative	Project Manager, Jhirk-Mulla Katiyar Bridge Project is the GoS’s designated representative.
Independent Engineer	The individual or legal person designated as such in accordance with the Independent Engineer’s contract and the Concession Agreement.
Initial Financing	Financing put into place by the Private Partner at the time of the Financial Close, which is sufficient for at least carrying out all of the design and construction work, and to obtain confirmation of substantial completion pursuant to the conditions set forth in the Concession Agreement.
	An individual who holds one of the following positions for a Bidder:



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Key Individual	<ul style="list-style-type: none"> • Project director; • Assistant project director; • Person in charge of structure design; • Person in charge of design; • Person in charge of construction; • Person in charge of operations and maintenance; • Person in charge of design, construction, and operation; • Person in charge of structuring the financing; and any other individual designated as Key Individual by a Bidder.
Lenders	<p>Some or all of the individuals or legal persons who are participating or committed to participating in financing the Private Partner’s Activities, whether in the form of loans, or other financing instruments. These shall include:</p> <ul style="list-style-type: none"> • A bank or bank syndicate; • Investors who purchase or agree to purchase debt securities with their own funds or funds under management.
Loan	<p>A contract for valuable consideration, under which the Private Partner obtains funds from a Lender or permission to use movable assets loaned or temporarily provided by the latter. This includes all borrowings, whether in the form of a bank loan, bonds etc</p>
Maintenance Schedule	<p>The schedule based on which the certificate of maintenance (as defined in Article 19 of the Concession Agreement) of the Road is issued by the Independent Engineer. This refers to the issuance dates of the certificates on the completion of annual maintenance, periodic/major maintenance, and major overlays respectively.</p>
Member	<p>An enterprise that is part of a Bidder on an exclusive basis and that will invest equity in the Private Partner</p>
Notice of selection of the Preferred Bidder	<p>The GoS’s notice sent to each following the selection of the Preferred Bidder and the reception by the GoS of the security deposit corresponding to the amount set forth in Section 1.6.6.</p>
Participant	<p>An enterprise that is part of a Bidder on an exclusive basis and that will not invest equity in the Private Partner, but that will be responsible on behalf of a Bidder for at least one of the following elements:</p> <ul style="list-style-type: none"> • 25% of the Concession’s design work; • 10% of the Concession’s construction work; • 25% of the Concession’s operations and maintenance activities
PPP	<p>Public Private Partnership</p>
Preferred Bidder	<p>Bidder selected pursuant to this RFP for the purpose of entering into the Concession Agreement. The Technical and Financial Evaluation Committee will select that Bidder as the Preferred bidder, who quoted the lowest proportionate present value of annuity payment comprising O & M, annual equity return amount and debt repayments & servicing provided that he technically qualifies.</p>
Private Partner/ Concessionaire	<p>An enterprise or Consortium that, further to this RFP and the final selection, enters into the Concession Agreement with the GoS. Concessionaire might be interchangeably used with Concessionaire Developer and/or Investor and/or private partner</p>



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Project	<p>The Project constitute the following:</p> <ol style="list-style-type: none"> I. Construction of 25 km two lane road and 1.2 km long Bridge over Indus River connecting National Highway (N5) via Jhirk to Tando Muhammad Khan Bathoro Road. II. Detailed Design, Finance & Construction of the Road and Bridge and related facilities III. Operation & Maintenance of the Bridge, the connecting relevant Roads and the Project facilities in conformity with AASHTO standards during the envisaged concession period IV. Transfer the Project and its related assets to the GoS upon completion of the concession period; which shall be of 27 years consisting of 2 years of construction and 25 years of O&M <p>All of the above is to be done on a DBFOT basis i.e. Design, Build, Finance, Operate and Transfer.</p>
Proposal/ Bid	A Proposal submitted by a Bidder in response to this RFP, and containing both a technical and financial proposal
Proposal Deadline	Deadline for Bidders to submit their Proposals, namely Jan 31, 2012. or any other date specified by the GoS by way of addenda
RFP	This Request for Proposals, including all volumes, appendices, and addenda thereto
Security Deposit/Bid Security	The security deposit that a Bidder must provide, in the form of Financial Guarantee given by a commercial Bank as found in Appendix C and the amounts and conditions specified in Sections 1.6.6 and 3.2
Scheduled Project Completion Date	June 30, 2014 or a date not later than -24-months from the Commencement Date as specified in Article Error! Reference source not found. and Error! Reference source not found. of the Concession Agreement.
Substantial Completion Date(s)	The date(s) on which the certificate of substantial completion (as defined in Article Error! Reference source not found. of the Concession Agreement) of the work is issued by the Independent Engineer.
Technical and Financial Evaluation Committee	The TFEC formed by the GoS for the purpose of analyzing and evaluating the Proposals
Technical Specifications	All of the features and requirements specified in Schedule A and Schedule H of the Concession Agreement
Users	All commuters using the Road in a road vehicle



1 INFORMATION FOR BIDDERS

1.1 Introduction

- 1.1.1 The globalization of markets, international economic integration, removal of barriers to business and trade, and increased competition, have enhanced the need for transportation. It is one of the most important infrastructure requirements which is essential for the expansion of opportunities and plays an important role in making or breaking the competitive positioning of a country.
- 1.1.2 Keeping this in view, Government of Sindh has envisaged a new route to connect existing roads of interior Sindh with a vision to provide a corridor which is perpendicularly cutting all big arteries and providing them direct access to N5 and subsequently to M9. The main objective of this project is to create a vertical access to northeast from Jhirk crossing overhead River Indus to Tando Mohammad Khan-Bathoro Road, which is the scope of this project. But the larger economic benefit of this project is linked with connecting this corridor with straight line to Canal Road 24.5 km, taking it further down to Pir Ali Mardan Road 28 km and Matli Road 37.5 km and Chanbar-Ghulam Ali Link (59.5 km in total from Indus River). But as phase I of this project, the scope of this project is as strictly defined in 2.1.4. while for phase II, which consists construction of road from Tando M.Khan-Bathoro Road to Chanbar-Ghulam Ali Road (34.5 km Road), GoS shall consider to do it after completion of phase I, which is the scope of this project.
- 1.1.3 This access would enable thousands of commuters living along above mentioned road accesses to connect at N5 and M9. Keeping in view the feasibility study of this project, it is evident that this project would entail lots of economic boost to the connecting areas as this would expectedly help alleviate poverty through raising land prices which would create more empowerment and easy en route for supply of food grains into other parts of province especially Karachi. It is also expected that this new route would help open up these areas for creation of soft infrastructure like better services for schools and health centres as these areas would become easy reach through development of this plan.
- 1.1.4 It is however, made clear that the project scope for this RFP is development of a bridge on River Indus (approximately 1200 meter) and connection of this bridge from Jhirk to Tando Mohammad Khan-Bathoro Road which comes to about 25 kms). The exact length of bridge and road construction would depend on detailed design and subsequent construction cost would be finalised based on the final design. For example, if detailed design demonstrates that bridge shall be built with a length of 1400 meter, the construction cost of the bridge shall be set to 1400 meters and likewise, the actual length of road shall be incorporated to fix the actual construction cost of the road. Thus, the cost of the project shall substantially be reduced or enhanced on the basis of actual scope of work emerging from detailed design.



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- 1.1.5 In response to the growing importance of efficient public infrastructure in driving sustainable economic development and growth, lifting levels of productivity and boosting regional employment, the GoS has embraced the PPP model as a key strategy for the accelerated delivery of its public infrastructure.
- 1.1.6 The RFP is being issued by Works and Services Department, GoS, in association with PPP Unit, Finance Department, GoS as a part of the Competitive Selection Process to invite the Bidders to submit Proposals with the intent to enter into the Concession Agreement for the proposed Design, Build, Finance, Operate and Transfer project (“DBFOT”)- Government pay Model to be undertaken on an approximately 25 km road and 1.2 km Bridge connecting National Highway (N5) via Jhirk to Tando Muhammad Bathoro Road. Further details on Scope of Work can be found in the Schedule A of the concession agreement
- 1.1.7 You are hereby invited to submit a technical proposal and a financial proposal in respect of the services required for the Concession given in Section 2 (referred to as “Data Sheet” hereafter).
- 1.1.8 A brief description of the Project and its objectives are given in the Data Sheet. Details are provided in the TOR.
- 1.1.9 Bidders are encouraged to submit their respective Bids after visiting the Project site and ascertaining for themselves the site conditions, location, surroundings, climate, availability of power, water and other utilities for construction, access to site, handling and storage of materials, weather data, applicable laws and regulations, the general and local conditions associated with implementing the Project and any other matter considered relevant by them.
- 1.1.10 The Bidders will be given the opportunity to discuss their comments and suggested changes on the Concession Agreement and Technical Specifications in the pre-bid meetings as specified in the Data Sheet, but no substantial change in the technical parameters and financial aspects would be considered.
- 1.1.11 Based on these comments and suggestions, a revised version of the Draft Concession Agreement and Technical Specifications will be distributed to the Bidders, reflecting the changes that are accepted by the GoS, entirely at the latter’s discretion. In case of any inconsistencies, the order of precedence will prevail.

Please note that:

- 1.1.12 While the information set out, or referred to, or included by reference in this RFP, including the Reference Documents, has been prepared and included in good faith, GoS gives no representation whatsoever that it is comprehensive or that it has been independently verified.
- 1.1.13 GoS does not make any representation or warranty express or implied as to the accuracy or completeness of such information, or any information on which the RFP is based, or any other background or reference information or documents prepared and made available to Bidders, and any liability related to such information is hereby expressly disclaimed.



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1.1.14 Bidders will make an independent assessment of the accuracy and completeness of such information and will have no claim whatsoever against GoS with respect to such information.

1.2 Award of Concession

1.2.1 It is anticipated that through the Competitive Selection Process, one of the Bidders will be selected to become the Preferred Bidder who will then be offered the opportunity to become a party (the “Concessionaire”) to a DBFOT-Government pay model Agreement (the “Concession Agreement”) for the delivery of the Project.

1.2.2 Proposals from the Bidders will be evaluated on the basis of the criteria specified in **Section 2.6**. GoS intends to select the Preferred Bidder that submits a Compliant Proposal with the lowest proportionate present value of the annuity payments required by a Bidder for implementing the Project.

1.3 Structure of the RFP

1.3.1 This RFP contains the following two volumes and their respective appendices:

- a. Volume 1: Instructions to Bidders
- b. Volume 2: Draft Concession Agreement

1.4 No obligation to select or proceed

1.4.1 Notwithstanding any other section in this RFP, by submitting a Proposal the Bidder, and each firm, corporation or individual member of the Bidder, acknowledges and agrees:

- a. The GoS may, at its discretion, refuse to consider and completely withdraw from the Consultation and Selection Process, or decide to proceed with the Project under a new PPP procurement process, or decide to proceed with the Project in some manner other than as a PPP; or reject any Proposal that, in the opinion of the GoS, is incomplete or irregular, contains exceptions or deviations that are unacceptable to the GoS, or contains false or misleading statements, claims, or information, or omits any material information that must be submitted under the RFP by a Bidder or a Bidder’s Collaborator
- b. GoS is not obliged to accept the Proposal that offers the lowest proportionate Present Value of Annuity Payments if this Proposal is not a Compliant Proposal and that the GoS’s decision with respect to the compliance or non compliance of a Proposal is final. The GoS is in no way obliged to consult the Bidder in making that decision.



1.5 Costs and expenses incurred by the Bidders

- 1.5.1 All costs, expenses and liabilities incurred by any Bidder and consortium members in connection with the preparation and submission of the RFP, including the provision of any additional information, attendance at meetings, conducting due diligence and in discussion with the GoS shall be borne by the Bidders and consortium members.

1.6 Documents

- 1.6.1 Bidders must prepare their Proposals using the attached Forms/Documents listed in the Data Sheet.
- 1.6.2 Bidders requiring a clarification of the Documents must notify the GoS, in writing, not later than three days prior to the respective pre-bid meetings. Any request for clarification in writing, or by email shall be sent to the Client's address indicated in the Data Sheet. The Client shall respond in writing or by email to such requests and copies of the response shall be sent to all invited Bidders.
- 1.6.3 At any time before the submission of proposals the Client may for any reason, whether at its own initiative or in response to a clarification requested by an invited consulting firm, modify the Documents by amendment. The amendment shall be sent in writing or by email to all invited consulting firms and will be binding on them. The Client may at its discretion extend the deadline for the submission of proposals.
- 1.6.4 Each Bidder should nominate a representative with whom the GoS should liaise and provide the representative's details including designation and all relevant contact details.
- 1.6.5 Submission of the Proposals
- 1.6.5.1 You shall submit one original technical proposal and one original financial proposal and the number of copies of each indicated in Section 2.1.6 of the Data Sheet. Each proposal shall be in a separate envelope indicating original or copy, as appropriate. The technical proposal shall be placed in a sealed envelope clearly marked "Technical Proposal" and the financial proposal in the sealed envelope clearly marked "Financial Proposal". These two envelopes, in turn, shall be sealed in an outer envelope bearing the address and information indicated in the Data Sheet. The envelope shall be clearly marked, "DO NOT OPEN, EXCEPT IN PRESENCE OF THE TECHNICAL AND FINANCIAL EVALUATION COMMITTEE."
- 1.6.5.2 In the event of any discrepancy between the original and the copies of the proposal, the original shall govern. The original and each copy of the technical and financial proposals shall be prepared in indelible ink and shall be signed by the authorized Bidder's representative. The representative's authorization shall be confirmed by a written power of attorney accompanying the proposals. All pages of the technical and financial proposals shall be initialled by the by the authorized Bidder's representative and be page numbered.
- 1.6.5.3 The proposal shall contain no interlineations or overwriting except as necessary to correct errors made by the Bidders themselves. Any such corrections shall be initialled by the person or persons signing the proposal.



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1.6.5.4 The completed technical and financial proposals shall be delivered on or before the time and date stated in the Data Sheet.

1.6.5.5 The proposals shall be valid for the number of days stated in the Data Sheet from the date of its submission. During this period, you shall keep available the professional staff proposed for the assignment. The Client shall make its best effort to complete the procedure at the location stated in the Data Sheet within this period.

1.6.6 Selection of the Preferred Bidder and announcement

The TFEC will choose, from among the eligible Proposals that are considered compliant, the Proposal that offers the lowest cost ("Preferred Proposals"), expressed by the proportionate present value of the annuity payments required by the Private Partner.

Once the evaluation of the proposals is completed, the Preferred Bidder will be announced, and a Notice of selection of the Preferred Bidder will be sent to all Bidders who submitted a Proposal.

1.6.7 Finalization of the transaction

Once the Preferred Bidder is announced, necessary negotiations take place to finalise the minute details of the Concession Agreement without touching the financial and technical aspects on which bids were invited and signing therefor. The next stages include leading to getting a Special Purpose Vehicle formed, carrying out detailed design of the project and reaching to the financial close. The Concessionaire will also be asked to replace his bid security with the performance security as a condition precedent to Concession Agreement.

The Bid security thus provided with the bids shall be required to be valid for initial 120 days and shall be replaced with the performance guarantee.

The performance guarantee must be valid from the date of its submission to the end of the defect liability period (which is 24 months after construction completion) in the amount at 1% of the final Project Cost. (see Section 3.2). The guarantee must be fully compliant with the format provided in the Schedule Q of the Concession Agreement.

Should the latter refuse to sign the final version of the Concession Agreement with the agreed-upon form and content, the GoS may draw/ confiscate on one or more of the letters of credit (for bid security or performance guarantee as the case may be) held, and retain and use the proceeds at will. Furthermore, it is entirely at the GoS's discretion to name another Bidder as the Preferred Bidder by initiating discussions with the Bidder who submitted the eligible Proposal with the lowest cost after that of the Preferred Bidder considered to be compliant with the second lowest cost, expressed by the proportionate present value of the annuity payments required by the Private Partner.



1.7 Potential changes to or termination of the Consultation and Selection Process

- 1.7.1 The GoS may, at its entire discretion, at any time, and for any reason, without becoming liable to the Bidder or to any other party, by way of addenda, modify, amend, or otherwise change all or any part of the RFP, including by amending the Consultation and Selection Process, by modifying the limits and scope of the Concession or Project, by extending any deadline or time limit (including the deadline for setting up the Concession) specified herein, or by suspending, postponing, or terminating all or any part of the Consultation and Selection Process. Any addendum will have to be issued by the GoS in writing, and will have to be explicitly identified as an addendum to this RFP. However, if there are substantial changes then GoS might rebid the whole project based on SPPRA Rules.
- 1.7.2 Without limiting the scope of the foregoing paragraph, even though the GoS intends to name a Preferred Bidder and sign a Concession Agreement, if the GoS fails to receive at least one Compliant Proposal for which all government approvals (excluding the environmental approbations required) have been obtained, the GoS reserves the right to terminate the Consultation and Selection Process.
- 1.7.3 If the GoS terminates the Consultation and Selection Process, the GoS reserves the right to proceed with all or any part of the Project, including the use of some or all of a Bidder's ideas and concepts, based on the approach that the GoS considers to be most suitable, which does not exclude the involvement of one or more of the Bidder's Collaborators.
- 1.7.4 In the event that the GoS rejects or annuls all the Bids, it may, at its discretion, invite all eligible Bidders to submit fresh Bids or restart the Consultation and Selection Process.
- 1.7.5 The GoS reserves the right to terminate the Consultation and Selection Process. The GoS shall, upon request by any of the bidders, communicate to such bidder, grounds for the cancellation of bidding process, but is not required to justify such grounds.

1.8 No contract

- 1.8.1 No contract whatsoever is created by or arises from this RFP (with the exception of the commitment form found in **Appendix E**), which under no circumstances constitute an offer to enter into a contract with any party whatsoever.
- 1.8.2 The GoS or the TFEC does not have an obligation, responsibility, commitment, or legal liability toward any Bidder or any Bidder's Collaborators arising from this RFP or any Proposal submitted in response to it, or from the Consultation and selection process.

1.9 No Collusion

- 1.9.1 By submitting a Proposal the Bidder, and each firm, corporation or individual member of the Bidder, represents and confirms to GoS, with the knowledge and intention that GoS may rely on such representation and confirmation, that its Proposal has been prepared without collusion or fraud, and in fair competition with the other Bidders and the Proposals of the other Bidders.
- 1.9.2 GoS reserves the right to disqualify any Bidder that in GoS's opinion has engaged in collusion in connection with this Project.



1.10 Project Team

- 1.10.1 The Works & Services Department, GoS is managing the PPP process and coordinating activities related to engineering, financing, traffic, Selection Process, legal affairs, communications, and the environment.
- 1.10.2 The GoS has designated a project manager who has been mandated to oversee all of the work required to carry out the Project.
- 1.10.3 Any other person or enterprise that has a contract with the GoS to work on the Concession is also ineligible, unless specifically exempted by the GoS. The GoS will inform Bidder, by way of addenda, of any contracts signed with such persons or enterprises.

1.11 No Lobbying

- 1.11.1 Bidders, and firm, corporation or individual members of a Bidder, will not attempt to communicate directly or indirectly with any representative of the GoS, the TFEC at any stage of this RFP process, including during the evaluation process, except as expressly directed or permitted by GoS, or except as may be required and permitted under another procurement competition, project or other assignment, in which event the Bidder will not have any discussions regarding the Project.
- 1.11.2 GoS reserves the right to disqualify any Bidder that, in GoS's opinion, has engaged in lobbying in connection with this Project.

1.12 No Claims

- 1.12.1 GoS shall not be liable for any claims, whether for costs, expenses, losses or damages, or loss of anticipated profits, or for any other matter whatsoever, incurred by the Bidder, or any firm, corporation or individual member of a Bidder, in preparing and submitting a Proposal, or participating in negotiations for the Concession Agreement, or any other activity related to or arising out of this RFP.

1.13 No Conflict

- 1.13.1 A Bidder shall not have a conflict of interest (the "Conflict of Interest") that affects the Competitive Selection Process. Any Bidder found to have a Conflict of Interest shall be disqualified. In the event of disqualification, the Authority shall forfeit and appropriate the Bid Security, as the case may be, as mutually agreed genuine pre-estimated compensation and damages payable to the GoS for, inter alia, the time, cost and effort of the GoS, including consideration of such Bidder's proposal, without prejudice to any other right or remedy that may be available to the GoS hereunder or otherwise. Without limiting the generality of the above, a Bidder shall be considered to have a Conflict of Interest that affects the Competitive Selection Process, if:
 - a) such Bidder (or any constituent thereof) and any other Bidder (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this qualification shall not apply in cases where the direct or indirect shareholding in a Bidder or a constituent thereof in the other Bidder (s) (or any of its constituents) is less than 1% of its paid up and subscribed capital; or
 - b) a constituent of such Bidder is also a constituent of another Bidder; or



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- c) such Bidder receives or has received any direct or indirect subsidy from any other Bidder, or has provided any such subsidy to any other Bidder; or
 - d) such Bidder has the same legal representative for purposes of this Bid as any other Bidder; or
 - e) such Bidder has a relationship with another Bidder, directly or through common third parties, that puts them in a position to have access to each others' information about, or to influence the Bid of either or each of the other Bidder; or
 - f) such Bidder has participated as a consultant to the GoS in the preparation of any documents, design or technical specifications of the Project.
- 1.13.2 A Bidder shall be liable for disqualification and forfeiture of Bid Security if any legal, financial or technical adviser of the GoS in relation to the Project is engaged by the Bidder in any manner for matters related to or incidental to such Project during the Competitive Selection Process or subsequent to the (i) issue of the LOI or (ii) execution of the Concession Agreement. In the event any such adviser is engaged by the Selected Bidder or Concessionaire, as the case may be, after issue of the LOI or execution of the Concession Agreement, then notwithstanding anything to the contrary contained herein or in the LOI or the Concession Agreement and without prejudice to any other right or remedy of the Authority, including the forfeiture and appropriation of the Bid Security, as the case may be, which the Authority may have there under or otherwise, the LOI or the Concession Agreement, as the case may be, shall be liable to be terminated without the Authority being liable in any manner whatsoever to the Selected Bidder or Concessionaire for the same.
- 1.13.3 GoS reserves the right to disqualify any Bidder that in GoS's opinion has a Conflict of Interest, whether such conflict exists now or is likely to arise in the future.
- 1.14 Changes to the composition of a Bidder**
- 1.14.1 Where the Bidder is a Consortium, change in composition of the Consortium may be permitted by the Authority during the Bid Stage, only where:
- a) the Lead Member continues to be the Lead Member of the Consortium;
 - b) the substitute is at least equal if not better, in terms of Technical Capacity and Financial Capacity, to the Consortium Member who is sought to be substituted and the modified Consortium shall continue to meet the pre-qualification and short-listing criteria for Applicants; and
 - c) the new Member(s) expressly adopt(s) the Application already made on behalf of the Consortium as if it were originally a party to it, and is not an Applicant/Member of any other Consortium bidding for this Project.



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1.14.2 Approval for change in the composition of a Consortium shall be at the sole discretion of the Authority and must be approved by the Authority in writing.

1.14.3 The modified/ reconstituted Consortium shall be required to submit a revised Joint Bidding Agreement before the Proposal Deadline.

1.15 Confidentiality

1.15.1 Information relating to the examination, clarification, evaluation and recommendation for the Bidders shall not be disclosed to any person who is not officially concerned with the process or is not a retained professional advisor advising the GoS in relation to, or matters arising out of, or concerning the Competitive Selection Process. The GoS will treat all information, submitted as part of the Bid, in confidence and will require all those who have access to such material to treat the same in confidence. The GoS may not divulge any such information unless it is directed to do so by any statutory entity that has the power under law to require its disclosure or is to enforce or assert any right or privilege of the statutory entity and/or the GoS.

1.15.2 All information supplied by GoS in connection with the RFP, including the documents shared as a part of the data room, shall be treated as confidential and Bidders shall not, without the prior written consent of GoS, at any time make use of such information for its own purposes or disclose such information to any person (except as may be required by law). The bidding documents shall remain the property of the GoS and are transmitted to the Bidders solely for the purpose of preparation and submission of the Proposal in accordance herewith. The Authority will not return any Bid or any information provided along therewith.

1.15.3 The RFP and every part of it and all other information provided by or on behalf of GoS must be treated as private and confidential. Bidders should not disclose the fact that they have been invited to submit a Proposal or release details of the RFP other than on a strictly confidential basis to those parties whom they need to consult for the purposes of preparing the Proposal.

1.15.4 Bidders shall not at any time release any information concerning the RFP and/or their Proposal and/or any related documents and/or any negotiation and/or discussion with GoS in this connection for publication in the press or on radio, television, screen or any other medium without the prior written approval of the GoS.

1.15.5 Each Bidder undertakes to indemnify GoS and to keep GoS indemnified against all actions, claims, demands, liability, proceedings, damages, costs, charges and expenses whatsoever arising out of or in connection with any breach of the provisions of this Section.

1.16 Project Schedule

The complete Consultation and Selection Process schedule is as follows:

Pre-bid Conference	30 th Dec 2011
Submission of Proposal	31 st Jan 2012



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Concession Agreement signing	28 th Feb 2012
Financial Close	30 th Jun 2012
Concession period	
Anticipated start of design	01 st Mar 2012
Anticipated end of design	30 th May 2012
Anticipated start of construction	01 st June 2012
Anticipated end of construction	30 th Jun 2014
Anticipated expiry of Concession Agreement & handover of facilities	30 th June 2039



2 DATA SHEET

2.1 Information for Bidder

2.1.1 The name of the Assignment is Design, Build, Finance, Operate and Transfer (“DBFOT”) of an approximately -25 km road and 1.2 km bridge connecting National Highway (N5) via Jhirk to Tando Muhammad Khan Bathoro Road. The name of the Client is Works and Services Department, GoS.

2.1.2 Project description

2.1.2.1 The Project involves Design, Build, Finance, Operate and Transfer an approximately 25 km and road including 1.2 km bridge with a posted speed limit of 100km/h connecting Jhirk to Mulla Katiar. It is currently envisaged that the contract term will be for a period of approximately 27 years. The GoS expects the term to include approximately 2 years of design and construction and 25 years of operating period with an anticipated Completion Date of June 30, 2014. The Project shall be transferred back to the GoS on Jun 30, 2039 at the expiry of the concession.

2.1.2.2 Following the end of the concession period, ownership of the Project related assets will be transferred to GoS. The Project will be structured as a Concession Agreement between GoS and the private sector through a Special Purpose Vehicle (“SPV”) that must be a locally registered company incorporated in accordance with the laws of Pakistan to be formed after issuance of Letter of Intent (“LOI”). The PPP Contract will be awarded through a Competitive Selection Process open to local and international prequalified bidders only.

2.1.3 Pre-bid meeting

Pre-bid conference for queries & clarifications at 12pm on Dec 30, 2011 in the Committee Room of the Finance Department, Government of Sindh, Barrack 19, Secretariat 4-A, Court Road, Karachi

The Bidders are requested to submit any substantive questions in writing or through fax or email to reach the GoS not later than one week before the meeting.

2.1.4 Project Liaison

The contact details for the primary person designated for this RFP are:

Project Manager,
Jhirk Mulla Katiar Bridge Project
Email: mushtaque1@yahoo.com,
Phone# 021-99203120
Address: Barrack No. 1, Secretariat 4-A, Court Road, Karachi, Pakistan



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2.1.5 Access to information, or to any modification or update shall be made available to the Bidders subject to submission of the Non-Disclosure Agreement to the GoS, duly signed by the Authorized Representative of the Bidder. Format of the Non-Disclosure Agreement is given in **Appendix G** of this RFP.

2.1.6 RFP response submission: Number of copies, Time and place of delivery

RFP responses shall be submitted in a sealed envelope no later than **4.00 pm PST** on Jan 31, 2012 to the following address, and marked for the attention of:

Secretary,
Works & Services Department,
Government of Sindh,
3rd Floor Sindh Secretariat Building No. 1,
Kamal Atta Turk Road,
Karachi, Pakistan.



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2.1.7 Proposals received after 4.00 pm (PST) on the Proposal Deadline will be returned to the sender unopened. Bidders are responsible for ensuring that their Proposals are submitted at the time and place specified in **Section 2.1.6**.

2.1.8 The sealed envelope shall consist of two (2) complete hard copies and one (1) complete soft copy of the proposal and other supporting documents including the Financial model in Excel spreadsheet form (on CD/DVDs).

2.2 Bid Validity

2.2.1 The Bid shall remain valid and open for acceptance for a period of 120 days from the Bid Submission Date. In exceptional circumstance, prior to expiry of the original bid validity period, the GoS may request Bidders to grant a specified extension in the period of validity. This request and the response thereto shall be made in writing or through fax or email.

2.2.2 A Bidder may refuse the request and can claim for return of his Bid Security. A Bidder agreeing to the request will extend the validity of its Bid Security correspondingly.

2.3 Opening of the Bids

2.3.1 The GoS will open the Bids, in the presence of Bidders, or their authorized representatives who choose to attend, at a Bid Opening at 12.00 pm on a date that shall be notified to all the bidders at the office of Secretary Works and Services Department. The Bidders' representatives who are present shall sign a register in evidence of their attendance.

2.3.2 The GoS will examine the Bids to determine whether they are complete and responsive in all respect.

2.3.3 The GoS shall prepare detailed minutes of the Bid Opening for transparency and its own record.

2.3.4 The Bidder's names, bid withdrawals (if any), the presence of the requisite Bid Security and such other details as the GoS at its discretion, may consider appropriate will be announced at the Bid Opening.

2.3.5 Any effort by a Bidder to influence the GoS in the process of examination, clarification, comparison and evaluation of Bids, or decisions concerning award of a Concession, will result in the rejection of that Bidder's Bid(s).

2.4 Technical and Financial Evaluation Committee (TFEC)

2.4.1 The Proposals will be evaluated by a TFEC, comprising of government officials which will choose the Compliant Proposal. The Evaluation Committee will select that Bidder as the Preferred bidder, who quoted the lowest proportionate present value of annuity payment comprising of O & M cost, annual return on equity and debt repayments & servicing provided that it technically qualifies.

2.5 Proposal Evaluation Process



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2.5.1 The evaluation of proposals shall commence immediately after the deadline for submission of proposals. Both technical and financial proposals will be evaluated by TFEC. Any proposal not in strict conformity with the format prescribed in this RFP will be disqualified. The proposal shall be evaluated based on criteria set in this RFP and the Preferred Bidder will be responsible for all activities incidental and ancillary to the successful completion of the project.

2.6 Evaluation Criteria

- 2.6.1 The TFEC shall carry out its evaluation, applying the evaluation criteria and point system specified below. Each responsive technical proposal shall be attributed a score out of a total of 100 points.
- 2.6.2 After complete evaluation of technical proposals, the financial proposals of the bidder technically qualifying the criteria shall be evaluated. This qualification shall be based on the bidder achieving a technical score equal or higher than 75.
- 2.6.3 The Evaluation Committee will select that Bidder as the Preferred bidder, who quoted the lowest proportionate present value of annuity payment comprising of O & M cost, annual return on equity and debt repayments & servicing provided that it technically qualifies.
- 2.6.4 The Proposal must be submitted at the place and by the deadline specified in **Section 2.1.6**.
- 2.6.5 The commitment form, identical in form and content to the one found in **Appendix E**, with no amendments or changes, must be signed by the Bidders and its Members.
- 2.6.6 The resolution giving a representative of the Bidder and each of its Members signing authority must accompany the commitment form.
- 2.6.6.1 The declaration, identical in form and content to the one found in **Appendix F**, with no amendments or changes, must be signed by the Bidders and their Members.
- 2.6.6.2 The Non-disclosure agreement, identical in form and content to the one found in **Appendix G**, with no amendments or changes, must be signed by the Bidders and its Members, for the access to data room.
- 2.6.6.3 The Bidder must provide the **Bid Security** described in **Section 3.2**. The financial bank guarantee shall be written in English, and must be fully compliant with the model found in **Appendix C**.



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- 2.6.4 Any other errors or omissions in a Proposal will not result in its automatic rejection. The TFEC reserves the right to ask Bidders to correct any errors or omissions in their Proposal, to the Committee's satisfaction, within the time limits specified in the request, which will be at least four business days. However, under no circumstances can Bidders amend their quoted periodic annuity payments as the result of clarifying or rectifying their Proposal.
- 2.6.5 Commercial compliance evaluation criteria
- a. The moment the Proposal is submitted, the Bidder must be bound by a Joint Bidding Agreement reflecting any changes in the consortium members from the time of submission of the Request for proposal.
 - b. Any changes to the composition of a Bidder require the GoS's approval, as stated in **Section 1.14**.
 - c. The Preferred Bidder must be an incorporated body or another type of legal entity/SPV who will sign the Concession Agreement.
 - d. The Proposal must contain a detailed description of the Bidder, as specified in **Section 3.1**.
 - e. Participants and Key Individuals who are not employees of the Bidder or of a Member or Participant of the Bidder must complete and sign a commitment form, identical in form and content to the one found in **Appendix E** with no amendments or changes. The resolution giving a representative of each Participant of the Bidder signing authority must accompany the commitment form.
 - f. Submission of Non-disclosure agreement, identical in form and content as specified in **Appendix G**, duly signed by the Bidders and its Members.
 - g. Proposals must not be conditional.
- 2.6.7 A technical proposal must satisfy the following conditions in order to be considered compliant:
- a. It must contain all of the information specified in **Section 3**.
 - b. The evaluation of a Proposal's technical compliance will focus specifically on examining certain key technical items or considered by the GoS to be sensitive. The following items will be verified:
 - Plan and profile
 - Bridge and Roadway cross-sections
 - Engineering structure cross-sections
 - Clearance and gauges
 - Materials
 - Quality management programs
 - Material control programs



- Environmental requirements
 - Consistency of schedules
 - Design assumptions
 - Construction techniques
 - Calculation standards and methods used
 - Project management systems
 - Traffic management
 - O & M program
 - Infrastructure inspection program
- c. This evaluation is neither comprehensive nor a complete verification of technical compliance with the specifications of the Concession Agreement.
- d. The Final Completion Date as per the Project Milestones given in this RFP or as may be agreed at the time of the Concession Agreement.
- 2.6.8 A financial proposal must meet the following requirements in order to be considered compliant:
- a. It must contain all of the information requested in **Appendix B**
 - b. In the opinion of the TFEC, the Bidder continues to have a sufficient financial capacity to bring to term the Concession.
 - c. The financing plan indicates that the planned financing is sufficient to cover all of the Concession’s requirements for the full term of the Concession Agreement (including design, construction, finance, operation, and maintenance).
 - d. The financial model:
 - provides a Final Completion Date as per the Project Milestones given in this RFP
 - is consistent with the annuity payments required by the Private Partner during the Concession Period
 - is consistent with the technical proposal (design schedule and cost, construction schedule and cost, maintenance schedule and costs, operations cost)
 - e. In the opinion of TFEC, the financing plan is robust in the short-, medium and long-term. “Robust” means that the contemplated financing is sufficient to support reasonable fluctuations in the main risks of the Concession (e.g.: inflation, construction costs and schedule, O&M costs, etc.) without triggering the Financing Instruments’ events of default.

2.6.9 Scoring criteria

Evaluation Criteria	Maximum score
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Technical evaluation criteria	
1. Structure of consortium and its technical capability (In house resources and experience in the engineering, design, financing, construction and management of public sector infrastructure projects) (Form 1 and 2)	25*
2. Project methodology (Form 3)	15
i. Design methodology and plan (a design that will meet the required scope of work and performance criteria detailed in Concession Agreement)	3
ii. Understanding of the environmental and quality management aspects of the Project	3
iii. Traffic management and safety plan and methodology	3
iv. Construction plan and methodology of the Project (construction methods and schedule that will ensure that the Project can be completed within the mandatory deadlines)	3
v. The operations, maintenance and rehabilitation plan and methodology of the Project (an effective operations and maintenance plan that meets the scope of work and performance criteria detailed in Concession Agreement)	3
3. Activity schedule and manpower induction schedule (Form 6 – 9)	10
4. Key specialist team (Form 5)	50*
Total Score	100

Financial Evaluation:

The Evaluation Committee will select that Bidder as the preferred bidder, who quoted the lowest proportionate present value of annuity payment comprising of O&M cost, annual return on equity and debt repayments & servicing provided that he technically qualifies. The party with the lowest score shall be deemed to be the preferred bidder if it qualifies technically and the formula for calculating the financial score is:

$$\text{Financial Score} = \frac{\text{Maximum Equity in percentage (which in this case is 25\% of the project cost)}}{\text{Bidder's proposed equity in percentage (starting from 13 \% upto 25 \%) of the total project cost}} \times (\text{PV of Annuity Payments})$$

Whereas Annuity payments shall be consist of annual O&M, annual debt repayments & servicing and required annual return on equity starting from the 1st year of operations – however, there shall be no payment for maintenance in the defect liability period which is of 24 months.



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1. Structure of consortium and its technical capability	25
Experience and performance of projects i.e. Overall number of projects carried out in last 5 years (Design, Construction, Operations & Maintenance)	7
i) 2 to 4 Projects	2
ii) 5 to 9 Projects	3
iii) 10 to 14 Projects	5
iv) 15 and more Projects	7
Experience and performance with road projects including bridge in the last 5 years (Design, Construction, Operations & Maintenance) - South Asia <i>(Following scoring system shall be applied to each of the three categories i.e. Design, Construction and Operations & Maintenance with the total score being average of the three scores)</i>	6
i) 1 to 2 Projects	2
ii) 3 to 4 Projects	4
iii) 5 to 6 Projects	6
Experience and performance with road projects including bridge in the last 5 years (Design, Construction, Operations & Maintenance) - International (excluding South Asia) <i>(Following scoring system shall be applied to each of the three categories i.e. Design, Construction and Operations & Maintenance with the total score being average of the three scores)</i>	5
i) 1 to 2 Projects	2
ii) 3 to 4 Projects	3
iii) 5 to 6 Projects	4
iv) 7 and more Projects	5
Average Total Asset size of the sponsor in the last 3 years (Form 1.4 given below) (cumulative)	7
i) PKR 1 billion to PKR 2 billion	3
ii) PKR 2 billion to PKR 5 billion	5
i) PKR 5 billion or more	7



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Project name	Country	Project description	Amount of financing	Your Company's investment (PKR or equivalent)	Type and term of financing	Funding sources	Current status	Date signed	Date completed	Roles and responsibilities with respect to financing	Client contact information
[add rows if necessary]											



Technical Evaluation Criteria	Maximum score
4. Key Specialist team (Break down)	
1. Structure & Bridge Engineer (s) (At least 3) (MSc Structure Engineering, 15 years experience, 8 years relevant projects)	15
2. Traffic Planning Engineer (MSc Transportation Engineering, 10 years experience, 6 years relevant experience)	6
3. Environmentalist (BSc Environment, 5 years experience, 2 years relevant experience)	3
4. Financial Specialist (CA/MBA(Preferably Major in Finance)/ or equivalent), 10 years experience, 8 years relevant experience)	7
5. Resident Engineer (MSc Civil Engineering, 12 years experience, 8 years relevant experience)	7
6. Operation and Maintenance Engineer (MSc Civil Engineering, 10 years experience, 8 years relevant experience)	7
7. Legal Specialist (LLB, 10 years experience, 5 years relevant experience)	5

Note on Scoring Criteria:

- BSc Score = +2
- MSc Score = +1
- PhD Score = +1
- Relevant projects experience each year +0.5 till max score is reached

2.7 Other Considerations

- 2.7.1 RFP responses must not be qualified in any way apart from as allowed under the RFP and must be submitted strictly in accordance with this RFP.
- 2.7.2 All RFP responses and other supporting documents shall be typed, in the English language and state all monetary amounts in PKR.

The RFP responses must be signed by the Authorized signatory of each of the Bidders and where applicable, each consortium member, signing under a power of attorney, substantially in the form specified in **Appendix A**, a copy of which is to be provided with the Bids/ Proposals.



2.8 Clarification of Proposals

- 2.8.1 The TFEC may at its discretion, during the evaluation after the Closing Date and Time, invite a Bidder to provide a presentation or clarification of the Bidder's Proposal, either in writing or by meeting directly with the TFEC. The TFEC is not required to invite any such presentation or clarification, or to have a meeting with any Bidder, and the TFEC may, at its discretion, invite such presentations or clarifications from only one or some of the Bidders. The TFEC may consider such presentations and clarifications in the evaluation of a Proposal.
- 2.8.2 Except upon invitation and request from the TFEC, no additional information may be submitted after the Closing Date and Time. The TFEC will have no obligation to request a Bidder to provide missing or deficient information.

2.9 Selection of Preferred Bidder

- 2.9.1 The TFEC, comprising of GoS officials, will make the selection of the Preferred Bidder, and the Contact Person will advise all Bidders in writing of the TFEC's selection decision. If GoS is unable to conclude a Concession Agreement with the Preferred Bidder, GoS reserves the right to proceed with negotiations with its second Preferred Bidder.

2.10 Right to Negotiate

- 2.10.1 After selection of the Preferred Bidder GoS reserves the right to negotiate changes to the Proposal or to any of the terms of the Concession Agreement, but the Preferred Bidder will not be entitled to initiate changes to its Proposal or to the Concession Agreement, except as set out and described in its Proposal.



3 STANDARD PROPOSAL FORMS

3.1 Information concerning the Bidders

3.1.1 Description of the Bidder

Bidder must provide the following information:

- a. A detailed description of the Bidder, including:
 - Legal name
 - Complete head office contact information, including mailing address, telephone and fax numbers, and an e-mail address
 - Incorporation details, including corporate charter, articles of incorporation, and proof of legal authorization to operate in Pakistan. If the Bidder is an unincorporated legal entity, proof of that legal entity's existence must be provided
- b. In case of a Consortium, the members of the Consortium shall enter into a binding Joint Bidding Agreement, for the purpose of submitting the Proposal. The Joint Bidding Agreement, to be submitted along with the Proposal, shall, inter alia:
 - convey the intent to form an SPV with shareholding/ ownership equity commitment(s) in accordance with this RFP, which would enter into the Concession Agreement and subsequently perform all the obligations of the Concessionaire in terms of the Concession Agreement, in case the concession to undertake the Project is awarded to the Consortium;
 - clearly outline the proposed roles and responsibilities, if any, of each member;
 - commit the minimum equity stake to be held by each member;
 - commit that all of the members, whose experience will be evaluated for the purposes of this RFP, shall subscribe to 51% (fifty one per cent) or more of the paid up and subscribed equity of the SPV and shall further commit that the members shall, for a period of 2 (two) years from the date of commercial operation of the Project, hold an aggregate equity share capital not less than: (i) 26% (twenty six per cent) of the subscribed and paid up equity share capital of the SPV; and (ii) 10% (ten per cent) of the Total Project Cost specified in the Concession Agreement;
 - members of the Consortium undertake that they shall collectively submit/ include a statement to the effect that all members of the Consortium shall be liable jointly and severally for all obligations of the Concessionaire in relation to the Project until completion of 12 months after the construction of the Project in accordance with the Concession Agreement; and
 - except as provided under this RFP and the Bidding Documents, there shall not be any amendment to the Joint Bidding Agreement without the prior written consent of the Authority.
- c. Annual audited financial statements for the past 5 years. These financial statements must be provided for each Member and Participant of the Bidder, or for their parent company, if the latter is acting as the Member or Participant's guarantor.



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- d. Details of any change since responding to the RFP in the credit rating of entities with debt rated by a rating agency if the entity had been rated by a rating agency.
- 3.1.2 Roles of Members and Participants
Bidder must describe in detail the individual roles of their Members and Participants, as well as the nature of their planned legal relationships between them. They must also produce a complete corporate organizational chart depicting interrelationships.
- 3.1.3 Role of Key Individuals
The Bidder must describe in detail the roles of Key Individuals, by drawing up one or more organizational charts for the various stages (design, construction, operation, etc.), indicating each person's function and relationships during these stages, including the roles of Key Individuals.
- 3.1.4 Intellectual Property Rights
The Bidders must provide a list of intellectual property rights together with the assignments and transfers and the licenses of intellectual property rights for all concepts, ideas and property developed or incorporated, in any manner, in the Bidder's Proposal, including copyright, inventions and other intellectual property rights and in respect of which it is or is not the owner of the intellectual property rights.
- 3.1.5 Any other supporting information or documentation that may assist the TFEC in the evaluation process, to be annexed to the Proposal.
- 3.2 Bid Security**
- 3.2.1 Each Bidder's Proposal must be accompanied by a Bid Security in the form of a Financial Guarantee given by a commercial Bank in the amount of PKR 1% of the Proposed Project Cost which shall remain valid for a period of 120 days beyond the validity period for bids, in order to provide the procuring agency reasonable time to act, if the security is to be called. The Bidders may opt to provide a Bid Security of a higher amount (that is, more than 1% of the Proposed Project Cost);
- 3.2.2 The Bid Security shall be released to the unsuccessful bidders once the preferred bidder has been selected and Letter of Intent (LoI) has been issued to successful bidder, or the validity period has expired. The guarantee must be compliant with the model provided in **Appendix C**.
- 3.2.3 Any bid not accompanied by the required Bid Security, or accompanied by a Bid Deposit in an amount less than that required or other than in the form of bank guarantee, SBLC, Letter of Credit will be rejected by the GoS as non-responsive. It is further clarified that no Bid Security in the form of insurance guarantee shall be entertained.
- 3.2.4 The Bid Security may be forfeited:
- a. In the case of a successful Bidder, if it fails within the specified times to:
- Comply the instructions laid down in the Letter of Intent within stipulated time;
 - Furnish the necessary Performance Security when required;
 - Sign the Concession Agreement; and



- Achieve all the conditions precedents agreed in the signed Concession Agreement including but not limited to Financial Close and Detailed Design
- b. In case of default as expressed above.

3.3 Information concerning the development of the technical proposal

- 3.3.1 Technical proposals submitted by Bidders must contain all of the items specified in **Section 3.5**, and must adhere to the format described therein. In addition, Bidders must ensure that their technical proposal is consistent with their financial proposal.
- 3.3.2 The technical proposal will provide the GoS with the means for assessing the Bidder's ability to comply with the Technical Specifications found in Schedule I, J, and K of the Concession Agreement.

3.4 Information concerning the development of the financial proposal

- 3.4.1 The financial proposal must contain each of the following items:
 - a. A financing plan and a financial model that meet the requirements stated in **Appendix B**.
 - b. The periodic annuity payments that the Private Partner is requesting for the Concession with clear time-lines.
- 3.4.2 It is important to consider that the financing plan gives a detailed description of the planned financial structure and Financing Instruments for establishing the Consortium, including a breakdown of the investments by the various types of instruments (e.g. equity, loans, etc.) and their terms and conditions. This information must be provided on a term sheet for each Financing Instrument that is used for the Initial Financing. A Bidder who plans refinancing during the term of the Concession must submit the same information for the Financing Instruments contemplated for the refinancing as for those for the Initial Financing. However, the GoS understands that the refinancing information, if applicable, constitutes assumptions that are subject to change.

3.5 List of standard proposal technical forms

- Form -1 A brief description of the organization of each member of the Bidder's Consortium and an outline of recent (not older than Ten years) experience on assignments of a similar nature. For each assignment, the outline should indicate, inter alia, the profiles of the staff provided, duration, contract amount and firm's involvement.
- Form -2 A list of Projects presently being under taken by the bidders and/or its consortium members and expertise-wise total number and number of staff deployed on the Projects being presently under-taken.
- Form -3 Bidders' understanding of the objectives of the Project, their approach towards implementation of the Project and a description of methodology/ plan that the Bidders shall follow to perform the required activities for the implementation of the Project.



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- Form -4 Any comments or suggestions on the TOR; The Bidders' comments, if any, on the data, services and facilities to be provided by the Client and indicated in the TOR.
- Form -5 CVs recently signed by the proposed key professional staff and an authorized manager in the Bidders' head office. Key information should include number of years with the firm and degree of responsibility held in various assignments especially during the last ten (10) years.
- Form -6 A monthly work plan illustrated with a bar or gantt chart of activities and graphics of the critical path method (CPM) or Project Evaluation Review Techniques (PERT) type.
- Form -7 A schedule for compilation and submission of various types of reports.
- Form -8 A work plan and time schedule for the key personnel also showing the total number of person-months by each key person.
- Form -9 The composition of the proposed staff team and the tasks which would be assigned to each staff members and their position.

Any additional information that may be necessary for proposal.



**Form 1
FIRM'S REFERENCE**

Relevant Services Carried Out in the Last Ten Years Which Best Illustrate Qualifications

Using in the format below, provide information on each reference assignment for which your firm, either individually as a corporate entity or as one of the major companies within a consortium, was largely contracted.

Assignment Name:		Country:
Location within Country:		Professional Staff Provided by Applicant Firm:
Name of Client:		No of Staff:
Address:		No of Staff Months:
Start Date (Month/Year):	Completion Date (Month/Year):	Approx. Value of Services (in Current USD/PKR)
Name of Associated Firm (s), if any:		No. of Months of Professional Staff Provided by Associated Firm(s)
Name of Senior Staff (Project Director/Co-ordinator, Team Leader) involved and functions performed:		
Narrative Description of Project		
Description of Actual Services Provided by Your Staff		

Name(s) of the Consortium member: _____



Form 2

PRESENT STAFF DEPLOYMENT

(As of _____)

Major Project(s) Presently Undertaken Associates(s)	Project Name	Location

Field of Expertise	Total Number of Permanent Staff	Staff Assigned to Above Projects



Form 3

APPROACH PAPER ON METHODOLOGY PROPOSED FOR IMPLEMENTATION OF THE PROJECT

Note: The Bidder will cover its proposed methodology for implementation of the Project in this section. Key evaluation aspects of the methodology are given as follows, however, the same are not exhaustive and the Bidders may cover any other information/ aspects, as may be necessary to implement the Project and comply with the requirements of the Concession Agreement.

Project methodology

i. Design methodology and plan

ii. Understanding of the environmental and quality management aspects of the Project

iii. Traffic management and safety plan and methodology

iv. Construction plan and methodology of the Project

v. The operations and maintenance plan and methodology of the Project



Form 4
COMMENTS/SUGGESTIONS OF BIDDER

On the Terms of Reference (TOR)

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.



Form 5

FORMAT OF CURRICULUM VITAE (CV) FOR PROPOSED KEY STAFF

1. Proposed Position: _____
2. Name of Firm: _____
3. Name of Staff: _____
4. Profession: _____
5. Date of Birth: _____
6. Years with Firm: _____
7. Nationality: _____
8. Membership in Professional Societies: _____
(Membership of PEC is Mandatory)
9. Detailed Tasks Assigned on the Project: _____
10. Key Qualifications:
[Give an outline of staff member's experience and training most pertinent to tasks on assignment. Describe degree of responsibility held by staff member on relevant previous assignments and give dates and locations. Use up to one page].
11. Education:
[Summarise college/university and other specialized education of staff member, giving names of institutions, dates attended and degrees/ diplomas obtained.]
12. Employment Record:
[Starting with present position, list in reverse order every employment held. List all positions held by staff member since graduation, giving dates, names of employing organizations, title of positions held and location of assignments. For experience in last ten years, also give types of activities performed and Client references, where appropriate.
13. Languages:-
[Indicate proficiency in speaking, reading and writing of each language: excellent, good, fair, or poor].
14. Certification:
I, the undersigned, certify that to the best of my knowledge and belief, these bio-data correctly describe myself, my qualifications and my experience.

Signature of Staff Member

Date: _____
Day/Month/Year

and: Authorized official from the firm



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**Form 6
WORK PLAN/ACTIVITY SCHEDULE**

Items of Work/Activities	Monthly Programme from the start of Project (in the form of a Bar Chart)														
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15



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Form 7 COMPLETION AND SUBMISSION OF REPORTS

Reports	Date
<ol style="list-style-type: none"> 1 Final Design Report and Construction/Working drawings (Using maps at 1:1000 and 1:500 scale) 2 Construction program/ plan 3 As-build drawings (Using maps at 1:1000 and 1:500 scale) 4 Construction certifications 5 Traffic Management and safety plan (during both the construction and operation phases) 6 O&M Manual 7 Routine/Annual maintenance records 8 Test records 9 Progress Photographs and presentations <p>The Concessionaire will submit monthly progress report with photographs, each photograph should carry information as under:</p> <ul style="list-style-type: none"> – Name of Project – Location – Type of Work – Serial number of photographs <p>At the end of the project the contractor shall deliver to the handing over committee two (2) albums with collection of most significant photographs taken during the concession period. (One album for construction phase and one for operation phase.)</p>	<p><i>[Dates to be given by the Bidder]</i></p>



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Form 8

WORK PLAN AND TIME SCHEDULE FOR KEY PERSONNEL

Name	Position	Months (in the form of a Bar Chart)															Number of Months	
		1	2	3	4	5	6	7	8	9	10	11	12	13	14	...		

Full Time: _____

Part Time: _____

Activities Duration _____

Yours faithfully,

Signature _____
(Authorized Representative)

Full Name _____
Designation _____
Address _____



Form 9

COMPOSITION OF THE TEAM PERSONNEL AND THE TASKS TO BE ASSIGNED TO EACH TEAM MEMBER

1. Technical/Managerial Staff

Name	Position	Task Assignment

2. Support Staff

Name	Position	Task Assignment



4 TERMS OF REFERENCE

4.1 Project Term and Parties

4.1.1 Parties

The Concession Agreement establishes the rights and obligations of both the GoS and the Private Partner. It will be signed between the GoS and the Concessionaire.

4.1.2 Term

The term of the Concession Agreement will commence from the Financial Close and will continue until the Termination Date. The GoS expects the term to include approximately 2 (two) years of design and construction and a 25 (twenty-five) year operating period with a Scheduled Project Completion Date of June 30, 2014, and an anticipated Expiry Date of June 30, 2039.

4.2 Ownership

The Private Party retains ownership of the right-of-way and the structures designed and build by it. The Private Party further enjoys the intellectual property rights to the systems required for traffic maintenance, as described in the Concession Agreement. Following the end of the contract period, ownership of the Project related assets will be transferred to GoS.

4.3 Detailed Project Scope

4.3.1 Brief particulars of the project are as follows:

	Name of Project	Length
a)	Construction of 2-Lane Bridge over River Indus connecting N-5 (near Jhirk) and Roads link to Tando Muhammad Khan	1,200 meters
b)	Construction of 2-Lane Carriageway for bridge approaches	25 kms

• The assessment of actual costs will have to be made by the Short-listed bidders. Bidders shall submit their bid as per the length of road and bridge stated above. Final length of the project may vary and accordingly the cost of the bidder shall be adjusted on the basis of detailed design.

4.3.2 Project Objectives and results

The objectives of the project include:

- a) Open a new corridor for the development of the area.
- b) Promotion of business activity in economic zones within the project area.
- c) Enhance operational efficiency due to new road corridor resulting in improved traffic conditions.
- d) Improve safety and reliability for the users along a key commuting road.



- e) Reduce travel time

4.3.3 Project Description

- 4.3.3.1 The project has been divided into the two components i.e. (a) Construction of 2-Lane Bridge over River Indus connecting N-5 (near Jhirk) and Roads link to Tando Muhammad Khan Bathoro Road
- 4.3.3.2 The western approach (Jhirk side) has length around 2.5km while on the Eastern side the approach length is about 22.5 km.
- 4.3.3.3 During the first two quarters of the construction phase, the project shall incur design and soil investigation costs along with other shared costs.
- 4.3.3.4 Operations will commence immediately upon project completion and would also be effective on issuance of substantial completion certificates by the Independent Engineer as defined in Article 14 of the Concession Agreement.



Jhirk Mulla Katiar Bridge – Request for Proposal

LOCATION PLAN





4.3.4 Project Scope Overview

4.3.4.1 Financing and commercial arrangements for the design, construction, operations and maintenance work in accordance with the Concession Agreement.

4.3.4.2 Detailed Design of Project

- a) Carry out map/ satellite picture study supplemented with area reconnaissance and study number of options for bridge location with approach roads of the bridge and present all options with merits and demerits after ground assessment of salient features of each location.
- b) The developer shall recommend in inception report, most suitable option for approval from the IE / GoS.
- c) Carryout hydrological studies also taking into consideration river flow patterns during peak flood and recession period.
- d) Frame Terms of Reference for Hydraulic Model Study for bridge, approaches and guide banks/protection works and coordinate with Irrigation Research Institute for conduct of model study. Concessionaire shall also be responsible for carrying out riverine area survey.
- e) Carry out fresh soil investigations for bridge and approach roads.
- f) Detailed designing of the project based on conceptual designs (x-section of bridge and approach road provided). The Concessionaire will be responsible for all aspects of Design in conformity with applicable standards and in accordance with the Concession Agreement, including the Design requirements as set out in Article 12 and Schedule J of the Concession Agreement.
- g) Detailed reconnaissance of project and review of all material / documents provided.
- h) Carryout topographic survey for the selected bridge location and approach road, soil investigation survey to determine Subsoil Condition, other required soil tests and analysis for the authenticity of any available report as the Client will not be liable to any discrepancy.



- i)** Detailed Geometric design as per the geometric Design criteria for roads given in the AASHTO standards. Also carry out pavement design, design of retaining/ protection works, design of erosion protection works and drainage works.
- j)** Carry out Bridge Structural Design in accordance with provisions of AASHTO LRFD Bridge Design Specifications.
- k)** Design of other minor structures and intersections (at-grade or grade separated)
- l)** Carryout environmental impact assessment of the project.
- m)** Prepare construction drawings
- n)** Preparation of land acquisition and utility/ infrastructures folders.
- o)** Carry-out EIA Report to seek approval from EPA as per their rules and regulations. (Land acquisition and clearance of encroachment will be the responsibility of the Client)
- p)** Carry-out Detailed Design of Rest areas, weigh bridges, offices and residency of operation and maintenance staff.
- q)** Give detailed plan of implementation strategy.
- r)** A summary of the design criteria is being provided to the Short-listed Bidders, however, to promote innovation, Bidders are encouraged to develop Proposals that differ or vary from the Reference Design and that comply with the requirements of the Concession Agreement. The general performance requirements for the Road and Bridge are given below:

4.3.5 Geometric Design Criteria

Design life

Bridges and structures	50 years
Pavement structures	10 years

Design speed (Max)

Flat terrain rural	100 km/h
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Flat terrain Town	60 km/h
Maximum super elevation	4.0%
<u>Transverse slope (Camber)</u>	
Pavement	2.0%
Shoulders	4.0%
Gradient (Min)	0.20%
Shoulder width either side	3.00 m
Outer shoulder treatment	Double Surface Treatment
Embankment height	Varies
<u>Embankment side slope</u>	
Fill	1:2 to 1:3

For Approach Road

Design Speed:

Rural	100 km/hr
Town	60 km/hr

Pavement Design Life	10 Years
----------------------	----------

Maximum Super-elevation 4%

Gradient:

Maximum	3%
Minimum	0.2%

Transverse Slope:

Carriageway	2% (crown)
Shoulder	4%

Carriageway Width	7.3 meters
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Shoulder Width (both sides)	3.0 meters
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Shoulder Surfacing	Double Surface Treatment (DST)
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Side Slope	2H:1V to 3H:1V
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Pavement Maintenance Governed by IRR Test and pavement Residual Strength as per AASHTO Standard

For Bridge

Design Life 50 Years
Width (See Cross Section attached)
Live Load Class AA Loading

For Material and Testing:

ASTM -American Society for Testing and Materials

AASHTO-American Association of State Highway and Transportation Officials.

For Structures:

AASHTO LRFD (Latest Edition) American Association of State Highway and Transportation Officials.

Loading:

West Pakistan Code of Practice for Highway Bridges 1967.

Seismic Design:

AASHTO analysis and design with latest Seismic zoning map for Pakistan as per revised current GoP Seismic parameters.

Other design criteria not specified herein shall be approved by the IE/GoS before being adopted for the design.

Structural Design:

For bridge locations, drawing scale of 1:500 shall be used showing the main features of the structure proposed, the centreline of the proposed carriageway, the topography of the adjoining terrain and the benchmarks, The final design plans shall include all details in appropriate scale necessary to construct the said structures. The choice of structure and specifications will be determined keeping in view the economy, aesthetics of material

4.3.6 Construction of Road and related facilities:

- 4.3.6.1 Construct the project in conformity with AASHTO standards
- 4.3.6.2 Satisfy all required tests on completion of project construction.



- 4.3.6.3 Operate the project in conformity with AASHTO Standards during the envisaged concession period
- 4.3.6.4 Maintain and repair the Project in conformity with AASHTO Standards during the envisaged concession period and managing the long term structural integrity of the road by considering good asset management practices during the design and construction phase of the project.
- 4.3.6.5 Obtain all applicable permits and registrations for design and construction related activities.
- 4.3.6.6 Hand over the project to Contracting Authority at the end of the PPP Contract period

4.3.7 Project Term and Parties

4.3.7.1 Parties

- The Concession Agreement establishes the rights and obligations of both the GoS and the Private Partner. It will be signed between the GoS and the Concessionaire.

4.3.7.2 Term

- The term of the Concession Agreement will commence from the Financial Close and will continue until the Termination Date. The GoS expects the term to include
- approximately two (2) years of design and construction and a 10 (ten) year operating period with a Scheduled Project Completion Date of 30th June 2014, and an anticipated Expiry Date of 30th June 2039 (as specified in Section 2.1.3).

4.3.8 Ownership

The Private Party retains ownership of the right-of-way and the structures designed and build by it. The Private Party further enjoys the intellectual property rights to the systems required for traffic maintenance, as described in the Concession Agreement. Following the end of the contract period, ownership of the Project related assets will be transferred to GoS

4.4 Detailed Project Scope

Terms of Reference to achieve overall objective of this project are as follows:

4.4.1 Detailed Design of the Project

Detailed Design shall be based as already defined above.



4.4.2 Construction of the Project road and ancillaries

- The Concessionaire will be responsible for all aspects of Construction in conformity with AASHTO standards and in accordance with the Concession Agreement, including the Construction requirements as set out in Article 13 and Schedule H of the Concession Agreement.
- During construction, the Concessionaire will be required to comply with the traffic management requirements set out in the Concession Agreement to minimize the impact of construction on other roads and provide certainty for road users.
- As stated in the Concession Agreement, the Private Partner must Plan for the Final Completion Date no later than 24 months after the Financial Close.
- Cost overruns and delays in completing the work shall be governed by the Concession Agreement.

4.4.3 The Concessionaire shall need to:

- Construct the Project within estimated time.
- Carry-out Quality Control tests as per AASHTO recommendations (See Schedule K of the Concession Agreement as per AASHTO and ASTM references). Records of tests will be signed-off by an Independent Engineer.
- Submit Constructions Program of the Project
- Submit Bridge/ Road safety plan and issues and diversion plan during construction to obtain control of traffic and minimum hindrance to traffic and make proper liaison with Police and Civil authorities before chart of west.
- Developer should provide independent supervision officer and facilitates their offices and inspection vehicles.
- Construction material will be used from approved sources with appropriate tests certification.
- Developer has to make sure that the site be clean from any debris, construction material and-machinery from site during operation phase.
- International and local safety standards and best practice procedure should be followed during construction phase.
- The developer has to submit As-built drawing at completion of work
- Extra blocks of measurements will be verified by the Independent Engineer



4.4.4 Facilities to be provided by developer:

4.4.4.1 Temporary Water supply

- Where owner's water tank and pumps are temporarily removed a supply to the property must be maintained by the developer.

4.4.4.2 Engineer's facility

- The contractor shall provide furnished, equip and maintain site office for the
- Engineer, Office provided shall be maintained by the developer, all times during the duration of the contract period including extension period if any.

4.4.4.3 Laboratory facility with testing equipment:

- The contractor shall furnish the laboratory testing facility with testing equipment, services, supplies, attendants, furniture and its running and maintenance cost for the tests to be conducted.
- All tests shall be executed according to AASHTO, ASTM and BS standards and all required equipments for facilitation of the tests should be furnished in the lab with two sets of latest editions of prescribes standards. (One to be placed in the laboratory and other for the Independent Engineer.

4.4.4.4 Temporary road, traffic management and control, general protection

- Layout plans showing the detailed proposals of temporary diversions to be carried out by the contractor shall be submitted to the engineer and to concerned district police and civil agencies for their written approval 10 days before the implantation date.
- Diversions must be constructed in advance of any interference with in the existing carriage way and shall be maintained in accordance to traffic load in a condition satisfactory to engineer.

4.4.4.5 Location of Utility Services

- Location and Identification of all services, in consultation with relevant Utility service provider(s), whether above ground or below the ground shall



be Contractor's responsibility following transfer of Project site by GoS to the Concessionaire, free from any encumbrances.

- Note: The developer should submit the list of tests to be carried out and their sample forms in the proposed methodology

4.4.4.6 Operation and Maintenance

- The Concessionaire is required to carry out Operations and Maintenance in respect of the Project in conformity with AASHTO standards and in accordance with the Concession Agreement. The O&M Requirements are set out in Article 19 and Schedule J of the Concession Agreement.
- The general scope of O & M includes all services associated with the planning, management and delivery of the operations, maintenance and asset preservation activities to ensure compliance with AASHTO standards and with all Performance Measures set out in the Concession Agreement.
- The Project should not require a major maintenance before ten years of commercial operations date and then again not require major maintenance before ten years of first major maintenance. Bidders should build the major maintenance expense into their annuity payment for that year; however, the payment for the major maintenance shall be made at the time of actual expense only after certification by the Independent Engineer and the Independent Auditor.

4.4.4.7 Operations Role

- Developer will ensure the smooth flow of vehicles and minimization of traffic delay and closures.
- Developer will ensure the safety of commuters and will provide emergency support to commuters
- Safety vehicle, tow trucks, ambulances, patrolling vehicles will be used by developer to ensure smooth operations of works
- Administration, monitoring of conditions, traffic control, assessment of the need for load restriction, posting of warnings to vehicles, and signage
- Rest areas and other facilitations will be operated and maintained by the Developer
- Quality management on a self-auditing basis, in conformity with AASHTO testing procedures
- Operation methodology:



- On Patrolling on three hour intervals, on 24/7/365 basis
- Emergency & Rescue response system
- Provision of Two away facilities
- Provision of emergency medical services/ambulance/clinic
- Maintaining traffic sign maintenance data
- Maintaining Cat's eye
- Maintaining Road marking
- Maintaining Bridges & Culverts
- Maintaining road
- Maintaining weigh bridges
- Maintaining weight violations data
- Maintaining death/injuries data
- Preparing periodic report with peak hour flows and peak day flows and other statistics
- Maintaining operational crew & equipment for emergency maintenance
- Preparing and implementing education programs and campaigns on:
 - Road safety and customer safety
 - Customer response & comments
 - Customer awareness
 - Operational staff awareness
 - Incentives for fragment road users
 - Maintaining fire fighting systems

4.4.4.8 Maintenance Role

Maintaining the Bridge and the relevant connecting Roads including road pavement, by passes, structures, pavement markings, drainage infrastructure, electrical systems, mechanical installations, closed landfill sites, landscaping, inspections, periodic repairs, traffic maintenance and emergency maintenance.

a) Annual/Routine Maintenance (From year 3 of Operations phase)

- Isolated holes, Pot holes, fold pavements, skin patch, widening roads in asphaltic layer should immediately be repaired
- Any damages to side barrier due to any accident or other causes should immediately be reported periodically
- Road Marking Maintenance
- Cat's Eyes Maintenance
- Traffic Sign Maintenance
- Minor maintenance due to damage caused by Road accidents



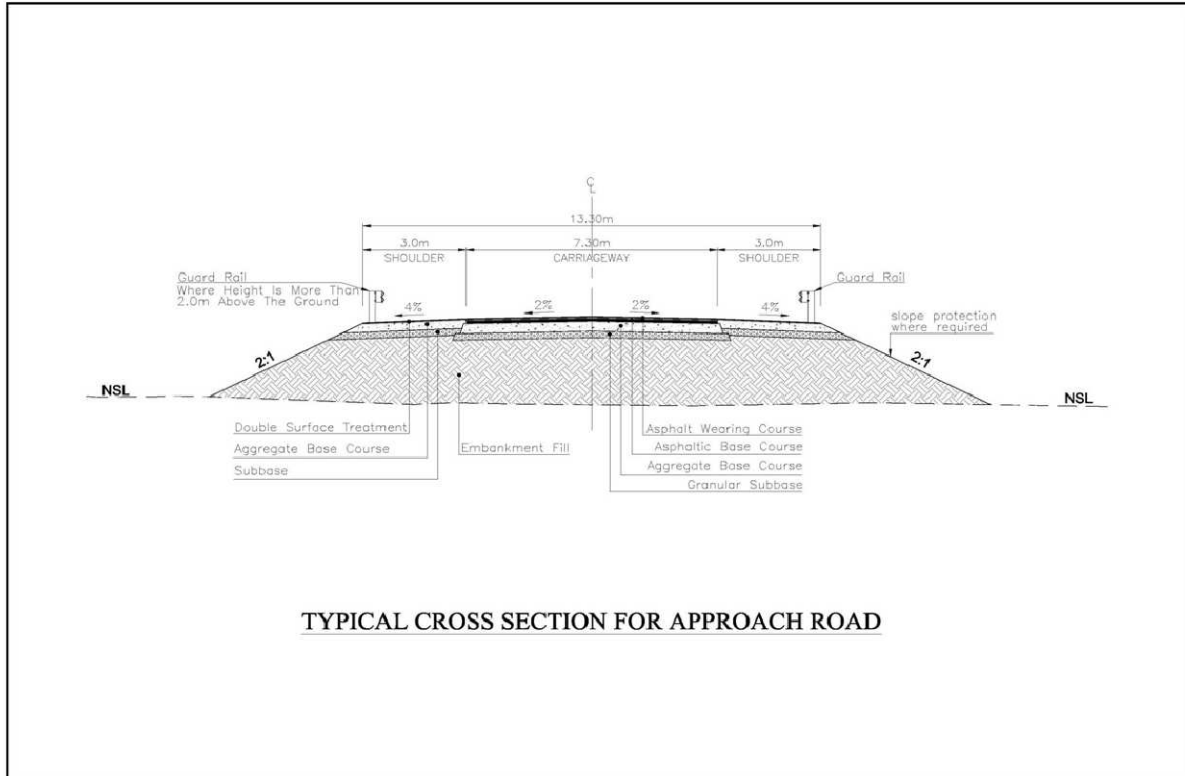
b) Periodic/Major Maintenance

- Over-lays
- Potholes Maintenance
- Guard Rail Maintenance
- Shoulder Maintenance
- New Road Marking
- International Road Roughness Test at selected sections identified by an independent engineer should be carried-out at every five years of operation and any portion of pavement found failed should be maintained as per AASHTO standards with approval from Independent Engineer. All the formalities will be checked for their stability and smooth operation.

The bidders are required to carry out project appraisal in detail and price the same in accordance with foreseen work. The construction of the Project is to be completed within 24-months of the Financial Close and the bids not accompanied with the workable completion schedule of 24-months construction period shall be declared as non-responsive. Any deviation on from the submitted schedule by the successful bidder till the signing of Concession Agreement shall be treated as a breach and shall cause forfeiture of security deposit unless an agreement, in writing, is reached with GoS for such a change.

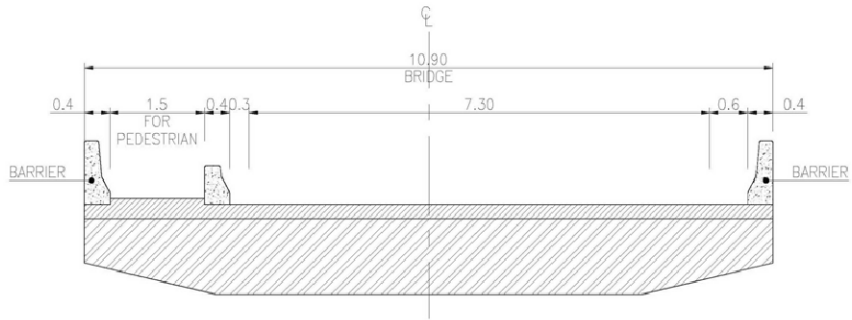


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TYPICAL CROSS SECTION FOR BRIDGE SUPER STRUCTURE



4.4.5 Operation and Maintenance (O&M)

- a. After the Commercial Operations Date, the Concessionaire will be responsible for the operations and maintenance of the Jhirk-Mulla Katiyar Bridge Project.
- b. The Concessionaire is required to carry out Operations and Maintenance in respect of the Road in conformity with AASHTO standards and in accordance with the Concession Agreement. The O&M Requirements are set out in Article 19 and Schedule J of the Concession Agreement.
- c. The general scope of O&M includes all services associated with the planning, management and delivery of the operations, maintenance and asset preservation activities to ensure compliance with AASHTO standards and with all Performance Measures set out in the Concession Agreement.

4.4.6 Operations Role

- a. Developer will ensure the smooth flow of vehicles and minimization of traffic delay and closures.
- b. Developer will ensure the safety of commuters and will provide emergency support to commuters
- c. Safety vehicle, tow trucks, ambulances, patrolling vehicles will be used by developer to ensure smooth operations of works
- d. Monitoring of conditions, traffic control, assessment of the need for load restriction, posting of warnings to vehicles, and signage
- e. Rest areas and other facilitations will be operated and maintained by the Developer
- f. Quality management on a self-auditing basis, in conformity with AASHTO testing procedures
- g. Operation methodology:
 - On Patrolling on three hour intervals, on 24/7/365 basis
 - Emergency & Rescue response system
 - Provision of Two away facilities
 - Provision of emergency medical services/ambulance/clinic
 - Maintaining traffic sign maintenance data
 - Maintaining Cat's eye
 - Maintaining Road marking
 - Maintaining Bridges & Culverts
 - Maintaining road
 - Maintaining weighbridges



- Maintaining Traffic Data
- Maintaining weight violations data
- Maintaining death/injuries data
- Preparing periodic report with peak hour flows and peak day flows and other statistics
- Maintaining operational crew & equipment for emergency maintenance
- Preparing and implementing education programs and campaigns on:
 - Road safety and customer safety
 - Customer response & comments
 - Customer awareness
 - Operational staff awareness
 - Incentives for fragment road users
 - Maintaining fire fighting systems

4.4.7 Maintenance Role

Maintaining the Road including road pavement, by passes, structures, pavement markings, drainage infrastructure, electrical systems, mechanical installations, closed landfill sites, landscaping, inspections, periodic repairs, traffic maintenance and emergency maintenance.

- a. Annual/Routine Maintenance (From year 3 of Operations and Maintenance phase)
 - Isolated holes, Pot holes, fold pavements, skin patch, widening roads in asphaltic layer should immediately be repaired
 - Any damages to median barrier due to any accident or other causes should immediately be reported periodically
 - Road Marking Maintenance
 - Cat's Eyes Maintenance
 - Traffic Sign Maintenance
 - Minor maintenance due to damage caused by Road accidents
- b. Periodic/Major Maintenance
 - Major Overlays
 - Potholes maintenance
 - Median Maintenance
 - Shoulders Maintenance
 - Replacement of road markings



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International Road Roughness Test at selected sections identified by an independent engineer should be carried-out at every five years of operation and any portion of pavement found failed should be maintained as per AASHTO standards with approval from Independent Engineer. All the formalities will be checked for their stability and smooth operation.

The bidders are required to carry out project appraisal in detail and price the same in accordance with foreseen work. The construction of the Project is to be completed within 24 months of the Financial Close and the bids not accompanied with the workable completion schedule of 24 months construction period shall be declared as non-responsive. Any deviation from the submitted schedule by the successful bidder till the signing of Concession Agreement shall be treated as a breach and shall cause forfeiture of security deposit unless an agreement, in writing, is reached with GoS for such a change.



4.4.8 Financing

- a. The Private Partner is responsible for developing and implementing the financing structure for the Concession including the financing and commercial arrangements for the design, construction, operations and maintenance work in accordance with the Concession Agreement
- b. The Concessionaire shall get incorporated a company exclusively for the purpose of implementing the Project (“Project Company” and/ or “SPV”) in which the Concessionaire shall maintain a minimum 20 percent equity throughout the Concession.
- c. The project shall be financed by 25 (twenty-five) % equity contribution out of which at least 13 (thirteen) % has to be contributed by the private partner while the commercial/bank debt component of the project financing shall not be in excess of 75 (seventy-five) %of the Project Cost.

4.4.9 Hand-over of the structure

- a. The Private Partner is responsible for handing over the structures to the GoS in a good working condition at the end of the Concession period as specified in Article 24 of the Concession Agreement without any further compensation to the Concessionaire at the time of such transfer. These structures are subject to an inspection and correction process in order to ensure that they are handed over in accordance with established terms and conditions.

4.5 Allocation of risks and responsibilities

4.5.1 The following table summarizes the allocation of some of the risks and responsibilities during the Concession Period. It is intended as a guide, and not as a comprehensive list of the risks and responsibilities. All of the Private Partner’s and GoS’s risks and responsibilities with respect to the Concession are set forth in the Concession Agreement. This Concession Agreement will be revised during the Consultation and Selection Process, in response to comments from Bidders.

Principle risks and responsibilities	Expected Allocation
Obtaining environment permits, authorizations and other licenses	
Design and construction	
Cost overruns	
Functionality of Design	
Ground Conditions	
Delays	
Moving existing public utilities	
New public utilities	



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Principal contractor	
Contaminated soil – undocumented and in existence prior to execution of the Concession Agreement	
Contaminated soil – documented or resulting from construction and O&M of the structure from which the Private Partner is responsible	
Geotechnical risks	
Property/ land acquisition within the Identified Right of Way	
Property/ land acquisition outside the Identified Right of Way	
Ownership of the right-of-way	
Obtaining temporary easements	
Financial close and the related financing conditions	
Traffic Management	
Operations & Maintenance	
Condition of assets upon hand-over to GoS at the end of Concession Period	
Force Majeure/ Relief Events	
Scope Changes initiated by Public Sector	

GoS
 Concessionaire/ Private partner



4.6 Compensation of Private Partner

- 4.6.1 The Private Partner will be compensated for certain risks and responsibilities assumed under the Concession Agreement through GoS support in the form of periodic annuity Payments.
- 4.6.2 The annuity payments are subject to deductions or holdbacks in the event of failure of Concessionaire to abide by the Concession Agreement. The Private Partner's compensation is summarized in this section, and is described in detail in Article 17 of the Concession Agreement.

4.7 Specific taxation framework for the Concession

- 4.7.1 The Concessionaire shall be liable to pay federal, provincial and local taxes as they exist on the day of the grant of Concession.
- 4.7.2 The Concessionaire's obligations to taxation and any taxation allowances are clearly identified in the Concession Agreement. The Bidder should state its acceptance of these obligations and should show the extent and timing of its tax provision and the proposed tax depreciation policy that will be adopted for each category of asset. (It should be assumed for taxation purpose that the residual value of all assets at the end of the Concession Period will be zero.) For the sake of clarity, the Concessionaire is expected to pay all the taxes, rents, and charges payable to any local government, provincial or federal government and it would not be allowed to seek any support from GoS if it was unaware or ignorant of any tax, rate or charges. This shall be applicable to new taxes as well.

4.8 Environmental matters

- 4.8.1 The GoS is committed to respecting the environment on all of its projects. The Concessionaire will be required to ensure that the design and construction of the work carried out in accordance with all laws, regulations and appropriate practices for protection of the environment as defined in Section 7.1 (h) of the Concession Agreement.

4.9 Environmental requirements and procedures

- 4.9.1 The Private Partner shall be responsible to carry out a detailed EIA study and would follow the recommendation thereof in the best interest of the environment and safety of the pedestrians, road users and commuters.



APPENDICES

[This space has been intentionally left blank]



APPENDIX A – POWER OF ATTORNEY FOR SIGNING OF BID

Know all men by these presents, We, _____ (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorise Mr. / Ms (Name), son/daughter/wife of _____ and presently residing at _____, who is [presently employed with us/ the Lead Member of our Consortium and holding the position of _____], as our true and lawful attorney (hereinafter referred to as the “Attorney”) to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our bid for the ***** Project proposed or being developed by the ***** (the “Authority”) including but not limited to signing and submission of all applications, bids and other documents and writings, participate in bidders' and other conferences and providing information / responses to the Authority, representing us in all matters before the Authority, signing and execution of all contracts including the Concession Agreement and undertakings consequent to acceptance of our bid, and generally dealing with the Authority in all matters in connection with or relating to or arising out of our bid for the said Project and/or upon award thereof to us and/or till the entering into of the Concession Agreement with the Authority.

AND we hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things lawfully done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us.

IN WITNESS WHEREOF WE, _____, THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS _____ DAY OF _____, 20**.

For: _____
(Signature)
(Name, Title and Address)



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Witnesses:

- 1.
- 2.

Accepted

[Notarised]

(Signature)

(Name, Title and Address of the Attorney)

Notes:

- The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.
- Also, wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a resolution/power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.
- For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Pakistani Embassy and notarised in the jurisdiction where the Power of Attorney is being issued.

APPENDIX B - I - MAIN COMPONENTS OF THE FINANCING PLAN AND THE FINANCIAL MODEL

SECTION	TITLE	CONTENT
This Appendix summarizes the instructions to be followed by Bidders in developing their financing plan and financial model.		
A.1	Financing plan	<p>Bidders must provide a detailed description of the proposed financial structure and financing instruments for the undertaking of the Concession. They must demonstrate that the proposed financing and financial projections are sufficient to cover all of the needs of the Concession during its term (including design, construction, operation, and maintenance). Bidders must also provide confirmation of the participation of the Lenders for the entire amount of the Initial Financing of the Concession.</p>
A.1.1	General Information	<ol style="list-style-type: none"> <li data-bbox="757 592 1942 799">1 The financing plan must include a description of the proposed financial structure, as well as the financing sources and instruments and the terms and conditions of the latter. The GoS expects that the financing plan will be at a sufficiently advanced state of development to provide a very high level of confidence with respect to the likelihood of its realization following the announcement of the Preferred Bidder. The proportion and source of Equity, Loans (bank, bond or other), and other Financing Instruments must be established. <li data-bbox="757 807 1942 1010">2 In order to minimize the risk at Financial Close, and to comply with the schedule proposed by the GoS, the latter will not accept a financing plan under which the Bidder proposes to rely on a best efforts underwriting arrangement to implement the Initial Financing. As a result, any financial proposal that is submitted on this basis will be judged to be non-compliant. At least 13% equity project costs should be funded by the Concessionaire’s equity while 75% of the project funding should be through bank debt; if need be then rest of the financing shall be done by the GoS

SECTION	TITLE	CONTENT
A.1.2	Financing conditions – Loans	<p>With respect to Loans (bank, bond, or any other type), the financial proposal must include a description of the following elements:</p> <ul style="list-style-type: none"> • the type and purpose of the Loan • the amount of the financing and the currency • the detailed capital draw-down schedule • the principal repayment schedule should be equal amortisation on a 7 year loan with 2 years of grace period and 5 years of repayment • For local financing the rate assumed should be bench-mark rate at 12.5% with a spread of 2.5%; leading to the interests on local financing rate of 15%. • engagement fees, underwriting fees, commitment fees, breakage costs and other expenses should be included at a reasonable rate • guarantees required • insurance or performance and payment guarantees required • reserve account and escrow account requirements (debt service, maintenance, etc.); • financial ratios to be maintained and other requirements and restrictive clauses; • events of default • step-in rights • hedging strategies proposed for mitigating the risks of interest rate, inflation, and exchange rate fluctuations, where applicable • conditions precedent • requirements pertaining to the due diligence review (The due diligence review should have been completed before submission of the Proposals) • any other restrictions, requirements, or conditions that could significantly influence the capacity of the Bidder to finalize the financing or to use the committed funds after the Financial Close • Interest During Construction (IDC) to be financed by GoS provided that the developer completes the construction within the scheduled time of 2 years. In case of delay in implementation, the IDC above 2 years will be borne by the developer.
A.1.3	Implementation of Financing	<p>A Bidder must present the timetable that it plans to follow in order to affect Financial Close of the Concession by the deadline established further to its selection as the Preferred Bidder. This timetable must respect the timetable proposed by the GoS, which envisages the commencement date from Jul 01, 2012</p>

SECTION	TITLE	CONTENT
-	-	-
A.1.5	Robustness of the financing plan	The Bidder must provide a description of the robustness of its financing plan, including details concerning the management of principal risks (e.g.: interest rates, inflation, revenues, construction schedule, capital expenditures, operations, regular maintenance, etc.), among other things.
A.1.6	Summary of the Financial Bid Offer	<p>A revised summary of the key elements of the Bid shall be provided by the Bidder. This statement shall include the following information:</p> <ul style="list-style-type: none"> • The Concession Company's equity commitment • Required proportionate PV of annuity payments starting from 1st year of operations comprising <ul style="list-style-type: none"> ➤ A. Annual O &M expenditure amount (provided that there shall be no maintenance payment during defect liability period) ➤ B. Debt repayment and servicing amount ➤ C. Required annual return on equity • The Project should not require a major maintenance before ten years of commercial operations date and then again not require major maintenance before ten years of first major maintenance. Bidders should build the major maintenance expense into their annuity payment for that year; however, the payment for the major maintenance shall be made at the time of actual expense only after certification by the Independent Engineer and the Independent Auditor. • A schedule of amendments that will be sought prior to the signing of a Concession Agreement (if any) • A schedule of land requirements (if any) that are envisaged • A schedule of any other conditions that are attached to the Bid (if any)
A.2	Financial model	
A.2.1	General information	Bidders must submit electronic (on CD) and hard copies of the complete and operational financial model used in preparing the Proposal. This financial model must be accompanied by an assumptions book and an instruction booklet. Each Bidder is free to develop its financial model at its discretion, insofar as the model meets the criteria presented in this Section.
A.2.2	Structure of the financial model	<p>1 The model must meet the following criteria:</p> <ul style="list-style-type: none"> • the financial model must be prepared on a monthly basis during the period ending at the Completion Date, and on an annual, semi-annual, or quarterly basis thereafter • the financial model must be properly constructed, and must have a professional appearance • the financial model must be produced using Microsoft Excel 2007 or a later version

SECTION	TITLE	CONTENT
		<ul style="list-style-type: none"> every sheet must be formatted in such a way that the printed information is clear and legible the financial model must be presented in nominal PKR, without decimals the financial model must cover the entire term of the Concession Agreement the cells that contain manual inputs must be shown in blue no sheet or cell may be hidden, and the file must not be password-protected calculations must be sufficiently disaggregated that they can be followed logically on screen or on paper without having to examine the content of each cell a limited number of nested formulas (“if”) must be used if the financial model contains circular references, it must include a description of the locations of these references and the reasons why they are present. In addition, the circular references must be resolved, that is, the software must find a solution <p>2 the conditions attached to the financing instruments must be those that are presented</p> <p>3 Bidders must use the following inputs in developing their financial models:</p> <ul style="list-style-type: none"> the construction start date for the financial model must be July 01, 2012 the closing date for the financial model must be June 30, 2039 the discount rate applied to arrive at the proportionate PV of annuity payments is 12% Cost inputs during DBFOT of the Project
A.2.3	Outputs required	<p>The financial model must contain at least the following output sheets:</p> <ul style="list-style-type: none"> the Sources and Uses of Funds of the Concession complete financial statements, including a balance sheet, an income statement, a statement of retained earnings, and a statement of cash flows. These financial statements must be prepared in accordance with International Financial Reporting Standards a summary sheet that contains the following elements: <ul style="list-style-type: none"> financial ratios, as requested by the Lenders, which indicate the capital structure established in the financial plan, notably debt service coverage ratios, including the minimum ratio, the average ratio, and the ratio calculated over the term of the loan Equity internal rate of (after-tax) return (“Equity IRR”) Project internal rate of (after-tax) return (“Project IRR”)
A.2.4	Flexibility required	<p>The financial model must allow sensitivity analyses to be carried out using the following elements (but not limited to):</p> <ul style="list-style-type: none"> variation in the rate of inflation during the construction period

SECTION	TITLE	CONTENT
		<ul style="list-style-type: none"> • variation in the rate of inflation during the period of operation • variation in interest rates (expressed in basis points) • variation (expressed in percentages) in capital expenditures and in costs of operations and regular maintenance • variation (expressed in percentages) in annuity payments
A.2.5	Assumptions book	<p>The assumptions book must set out the following elements in sufficient detail to allow users to obtain a clear understanding of the financial model:</p> <ul style="list-style-type: none"> • Capital and construction costs for the following categories (including all assumptions in respect of future inflation and the applicable method used for such calculations): <ul style="list-style-type: none"> – Earthworks – Road pavement – Drainage – Major structures – Minor structures – Traffic signing and road markings – Buildings – Facilities required for operations – Public use facilities • Design, consultancy and project management fees, contingency costs and Insurance costs • Operations and Maintenance costs (including all assumptions in respect of future inflation and the applicable method used for such calculations) for the following categories: <ul style="list-style-type: none"> – Routine monitoring, patrolling and vehicle recovery costs – Costs associated with routine inspection and maintenance programmes • Taxation (Please refer to Section 4.7 of this RFP) <p>Consumer Price Index to be used for indexation is to be assumed at 10% for uniformity between different bidders' model and O&M costs for the first year of full O&M (year 3 after construction completion) should not be more than 1% of the project construction costs</p>
A.2.6	Instruction book	<p>The instruction booklet must explain the various functionalities of the financial model in sufficient detail to allow users to manoeuvre it effectively. More specifically, the instruction booklet must include:</p> <ul style="list-style-type: none"> • instructions pertaining to the method for changing inputs • instructions pertaining to the method for running the model after making changes to the inputs

SECTION	TITLE	CONTENT
		<ul style="list-style-type: none">• instructions pertaining to the method for printing the sheets contained in the model• a summary of the sheets contained in the model and the information therein• details concerning complex and/or unusual formulas• instructions pertaining to the method for performing sensitivity analyses



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APPENDIX C – FINANCIAL BANK GUARANTEE

Addressee: Government of Sindh (the “Beneficiary”)

Guarantee No: _____

Date of Issue: _____

Date of Expiry: _____

Guarantee Amount: _____

Name of Guarantor: _____

Name of Principal: _____

Penal Sum of Security: _____

FINANCIAL BANK GUARANTEE

Whereas the ***** (the Authority), having their head office, hereinafter called the “GoS” which impression includes its successors, assignees and transferees, has floated an RFP dated for inviting proposals from the competent and eligible Bidders for the Design, Build, Finance, Operation and Maintenance of Jhirk-Mulla Katiar Bridge

AND

Whereas _____, a body corporate constituted under Companies ordinance 1984 having its registered office at _____ which impressions include its successors, assignees and transferees, herein called the “develop”, has responded to RFP by submitting a formal proposal as per the requirement duly detailed in the RFP.

AND

WHEREAS one of the material conditions in the RFP was to provide Bid Security for a total amount of PKR [xxxx] in the form of Financial Guarantee of any scheduled Bank, along with the proposal responding to the RFP.

AND

Whereas the said Developer has applied and requested us _____ having registered office at _____, herein called the “Guarantor” or the “Guarantor Bank”, to provide Bid Security by way of Financial Bank Guarantee or Bid Guarantee to the GoS in compliance with the terms of the RFP or Tender.

We, the Guarantor Bank, at the request of the “Developer” and in consideration of the Developers proposal to the GoS, do hereby irrevocably and unconditionally declare, agree and execute this guarantee whereby we shall be bound, liable and obliged to pay the GoS an amount of PKR [xxxx] forthwith on the written demand from the GoS, without (i) assigning or insisting for any proof,



evidence or document in support of the demand, (ii) requiring the GoS to provide any further documents (iii) raising any dispute whatsoever, (iv) going into the question of validity, proprietary or legality of the said demand; or (v) requiring the GoS to invoke any legal remedy that may be available to it, provided any one of the following conditions to occur:

- 1) The Developer has withdrawn its bids during its validity period as duly specified in the Tender/RFP
- 2) The Developer fails or refuses to execute formal contracts after its proposal is accepted by the GoS and such acceptance is duly conveyed to it.
- 3) The Developer fails or refuses to provide Performance Guarantee or Security in terms of the Tender/RFP after its proposal is duly accepted.
- 4) Failure of the Developer to submit “Performance Security Bond” in shape of bank guarantee or failure to meet Conditions Precedent shall also cause the forfeiture of this bank guarantee.

Notwithstanding anything contained hereinabove:

- a) Our financial liability or obligation under the Guarantee shall not exceed PKR [xxxx].
- b) The Bank Guarantee shall be valid up to one year starting from the date of issue.
- c) We shall be liable to pay the sum assured or any part of it under the Guarantee only and only if the GoS invokes this guarantee and written claim or demand for the guaranteed amount is served upon us on or before DDMMYY.

The material or essential condition of the guarantee is that we shall pay the amount assured under this guarantee unconditionally just on written demand from the GoS on happening of any of the aforesaid conditions.

- 5) This Guarantee shall not be prejudiced or affected by changes in the constitution of the Guarantor howsoever arising and the Guarantor and its successors shall continue to be liable in terms hereof.
- 6) This Guarantee is without prejudice to and in addition to any other security or securities held or which may be held by the GoS.
- 7) The giving or granting of time or any extension thereof to the Guarantor or the Developer or the neglect, commission or forbearance on the part of the GoS in requiring or enforcing payment of any moneys due hereunder or any other variations, modifications or amendments to the RFP or any other writing between the parties shall not in any way prejudice limit, restrict or affect this Guarantee and as between the Guarantor and the GoS. The Guarantor shall be considered the principal debtor and not merely as surety for all the sums hereby guaranteed to be paid and which may become payable by the Guarantor to the GoS under these presents.
- 8) In case any part of this Guarantee is held, declared or rendered illegal, invalid or inoperative for any reason whatsoever, such holding or declaration shall not in any way affect or prejudice the validity and enforceability of any other part which shall be separable there from.
- 9) The benefit of this Guarantee shall ensure to the GoS's Successors and assigns and shall be irrevocable until discharge by the Guarantor of their obligation as herein provided.



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- 10) The GoS shall be entitled to proceed against the Guarantor without making the Developer a party to such proceedings.

Authorized signatory: _____

Date: _____

Place: _____

Authorized signatory: _____

Date: _____

Place: _____



APPENDIX D – POWER OF ATTORNEY FOR LEAD MEMBER OF CONSORTIUM

Whereas the ***** (“the Authority”) has invited bids from Bidders for the ***** Project (“the Project”).

Whereas, _____, _____ and _____ (collectively the “Consortium”) being Members of the Consortium are interested in bidding for the Project in accordance with the terms and conditions of the Request for Proposal and other connected documents in respect of the Project, and

Whereas, it is necessary for the Members of the Consortium to designate one of them as the Lead Member with all necessary power and authority to do for and on behalf of the Consortium, all acts, deeds and things as may be necessary in connection with the Consortium’s bid for the Project and its execution.

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS

We, _____ having our registered office at _____, M/s. _____, having our registered office at _____, and M/s. _____, having our registered office at _____, [the respective names and addresses of the registered office] (hereinafter collectively referred to as the “Principals”) do hereby irrevocably designate, nominate, constitute, appoint and authorise M/s _____, having its registered office at _____, being one of the Members of the Consortium, as the Lead Member and true and lawful attorney of the Consortium (hereinafter referred to as the “Attorney”) and hereby irrevocably authorise the Attorney (with power to sub-delegate) to conduct all business for and on behalf of the Consortium and any one of us during the Competitive Selection Process and, in the event the Consortium is awarded the Concession/ Contract, during the execution of the Project, and in this regard, to do on our behalf and on behalf of the Consortium, all or any of such acts, deeds or things as are necessary or required or incidental to the submission of its bid for the Project, including but not limited to signing and submission of all applications, bids and other documents and writings, participate in bidders’ and other conferences, respond to queries, submit information/ documents, sign and execute contracts and undertakings consequent to acceptance of the bid of the Consortium and generally to represent the Consortium in all its dealings with the Authority, and/ or any other Government Agency or any person, in all matters in connection with or relating to or arising out of the Consortium’s bid for the Project and/ or upon award thereof till the Concession Agreement is entered into with the Authority.

AND hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things lawfully done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us/ Consortium.



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IN WITNESS WHEREOF WE THE PRINCIPALS ABOVE NAMED HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS _____ DAY OF _____ 20**.

For: _____
(Signature)
(Name, Title and Address)

For: _____
(Signature)
(Name, Title and Address)

For: _____
(Signature)
(Name, Title and Address)

Witnesses:

- 1.
- 2.

(Executants)

(To be executed by all the Members of the Consortium)

Notes:

- The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.
- Also, wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a resolution/power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.
- For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Pakistani Embassy and notarised in the jurisdiction where the Power of Attorney is being issued.



APPENDIX E – COMMITMENT FORM

Request for Proposals for the Design, Build, Finance, Operation and Transfer of Jhirk-Mulla Katiyar Bridge Project [date to be provided]

COMMITMENT FORM

A Commitment form must be completed by the Bidder and by each of its Members and Participants, and by Key Individuals who are not employees of the Bidder, a Member, or a Participant.

TO: GOVERNMENT OF SINDH

For sufficient good and valuable consideration, receipt of which is hereby acknowledged, we hereby agree to the following:

1. Definitions

Unless the context indicates otherwise, terms and expressions with an uppercase initial that is used herein and in our Proposal have the meaning given to them in the RFP.

2. General

We, the undersigned, acknowledge, confirm, and agree that:

A) we have examined, read, and understood the Concession Agreement (including its schedules) and **Volume 1** (including its schedules) respectively dated [date to be provided] and [date to be provided] as it relates to the Concession, as amended by way of addenda (collectively, the “RFP”);

B) we have satisfied ourselves that we have a full and complete understanding of the nature and location of the Project, as well as of the general and local conditions and the other conditions under which the Concession Agreement will be carried out.

3. Pricing

We confirm that all prices appearing in our Proposal are expressed in PKR, and represent aggregate prices that include all taxes except GST.

4. Guarantees required by the Lenders

We declare that we will be able to provide the guarantees required by the Lenders, as set out in the term sheet for each of the Financing Instruments.

5. Revised and final Partnership Agreement

We declare and confirm that we are prepared to execute the revised and final Concession Agreement dated DDMMYY and as modified by addendums, without any negotiation or amendment thereof, with the exception of minor changes to include features that are specific to the Proposal of the Preferred Bidder.



6. Firm and irrevocable Proposal

Our Proposal constitutes a firm offer to the Government of Sindh that is irrevocable and binding upon us, and that cannot be withdrawn or amended until after a period of six months following the Proposal Deadline indicated in the RFP.

7. Proposal compliant with submission requirements

We declare and confirm that our Proposal satisfies and complies with the submission requirements indicated in the RFP, specifically including:

- the eligibility criteria;
- the commercial compliance evaluation criteria;
- the technical proposal compliance evaluation criteria;
- the financial proposal compliance evaluation criteria.

8. RFP

We acknowledge, confirm, and agree that our Proposal is subject to the terms and conditions of the RFP, including all disclaimer clauses and all limitation of liability clauses in favour of the Government of Sindh or any other party mentioned therein. In particular, we acknowledge, confirm, and agree that we are bound by the terms and conditions of **Section 0** of Volume 1 of the RFP.

9. No material deterioration

We hereby declare and warrant that:

- with the exception of what is indicated in detail in a written document attached to this letter, our financial situation and our business operations have undergone no adverse material change since the date of the most recent financial statements contained in the Submission that was presented in response to the Request for Qualifications for the Partnership;
- with the exception of what is indicated in detail in a schedule attached to this letter, there is no action, suit, or proceeding pending against us, or, to our knowledge, after satisfactory investigation, imminent against us or legally concerning us, brought before or by any organization, tribunal, commission, board, agency, or federal, provincial, municipal, or other office, domestic or foreign, or brought before or by any arbitrator or arbitration board, that could, in the event of an unfavourable decision, have a material adverse effect on our solvency, liquidity, or financial situation;
- with the exception of what is indicated in detail in a schedule attached to this letter, we are not aware of any reason for which an action, suit, or proceeding could be brought.

10. No collusion or conflict

In preparing and submitting our Proposal, we declare, warrant, and confirm that we have not discussed or communicated, either directly or indirectly, with any other Bidder, or with any officer, director, employee, consultant, advisor, agent, or representative of any other Bidder (including any Member, Participant, or Key individual of the team of a Bidder), regarding the content, preparation, or presentation of its Proposal. Our Proposal has been submitted without any relation (including a relation solely in the form of a shareholding or other interest in the



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ownership of a Bidder or of a Member, Participant, or Key individual of the team of the Bidder, with the exception of a holding of less than 1% of the voting shares of any company whose shares are traded on a recognized stock exchange), knowledge, exchange, or comparison of information, or any arrangement with any Bidder or any director, officer, employee, consultant, advisor, agent, or representative of any Bidder (including any Member, Participant, or Key individual of the team of a Bidder).

We hereby declare, warrant, and confirm that we do not have any knowledge, either direct or indirect, of any Proposal of any other Bidder, and that we do not have any interest in any such Proposal, and that we have not concluded any agreement or understanding or any formal or informal arrangement that could result in our having such knowledge or interest prior to the submission of our Proposal.

With the exception of what is indicated in detail in a schedule attached to this letter, we hereby declare, warrant, and confirm that, to our knowledge, no real or apparent Conflict of Interest has arisen, exists, or is reasonably likely to arise in the future in connection with the submission of our Proposal in response to the RFP, or in connection with the delivery of the services required of the Private Partnership.

We hereby declare, warrant, and confirm that we have no access to any confidential information belonging to the Government of Sindh, and that we are not in a position to take advantage of any right of access to such information (other than confidential information that the Government of Sindh may communicate to all Bidders).

11. Evidence of authority

We acknowledge that the Government of Sindh requires that each of the undersigned (other than a Key individual) provides evidence, in the form of a resolution in a form deemed acceptable by the Government of Sindh, that the person signing this Commitment Form on behalf of the undersigned has the authority required to do so and to bind the undersigned.

12. Copies

This Commitment Form may be signed in multiple copies, each of which is deemed to be an original, and these copies together shall constitute a single instrument.

IN WITNESS WHEREOF we have signed this Commitment Form on [date to be provided].

Bidder:

(Name)

(Street address or postal box number)

(City, Province, and Postal Code)

Authorized signatory:



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Name and title: _____

(Please type or print)

IF THE BIDDER IS A CONSORTIUM OR OTHER ENTITY:

Executed and delivered by: _____

[*NAME OF THE CONSORTIUM OR OTHER ENTITY] by its duly authorized representative, and by **[provide particulars on the signature]:**

[NAME OF BIDDER *]

(Authorized signatory)

(Authorized signatory)

Each of the undersigned hereby:

- acknowledges that the Bidder has signed the above-mentioned Commitment Form;
- acknowledges and confirms that he has read, reviewed, and understood each of the provisions of the Proposal, that he accepts them, and that the Proposal has been submitted with his consent;
- confirms and agrees that the provisions of Sections 2, 8, 9, 10, 11, and 12 apply to him, with such modifications as the circumstances require.

EXECUTED on _____.



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Member:

(Name)

Name and title:

(Please type or print)

Authorized signatory:

(Name)

Name and title:

(Please type or print)

Participant:

(Name)

Name and title:

(Please type or print)

Authorized signatory:

(Name)

Name and title:

(Please type or print)

Key individual*:

(Name)

Name and title:

(Please type or print)

* Applicable to Key Individuals who are not employees of the Bidder, a Member, or a Participant



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APPENDIX F – DECLARATION

We the undersigned return this RFP submission, the Proposal and its appendices, and acknowledge that we are bound by its content.

We confirm that we are fully conversant with the requirements of the GoS and the subject matter of the procurement exercise as set out in the RFP.

By submitting a Proposal, we represent and warrant to the GoS that our Proposal has been prepared, relies and has been submitted solely on investigations, examinations, knowledge, analyses, interpretation, information, opinions, conclusions, judgments, and assessments independently undertaken, formulated, obtained, and verified by us and our team members and not in any way upon any action or omission, the scope, timeliness, accuracy, completeness, relevance, or suitability of any Information. We further warrant that we understand all aspects of the RFP and its governing rules including but not limited to the evaluation criteria laid down in this RFP and that the same is in line with the SPPRA rules.

We warrant that the details of this RFP submission have not been communicated to any other person or adjusted in accordance with any agreement or arrangement with any other person or organization.

We acknowledge that the GoS is not bound to proceed with the procurement exercise and reserves the right at its absolute discretion to accept or not accept any Proposal submitted and thereafter invite any Preferred Bidder to enter into a Concession Agreement for the delivery of the Project.

We certify that we have full power and authority to submit this RFP response and that this is a bona fide RFP submission.

Signed for and on behalf of (Bidder/consortium member) _____

Signature: _____

Position: _____

Name: _____

Address: _____

Power of attorney attached: (YES/NO) _____

Date: _____

(Please return this declaration on your company's letter head.)



APPENDIX G – NON-DISCLOSURE AGREEMENT

[To be printed on Company letterhead of the Lead Consortium Member]

Strictly Private & Confidential

DD MM 2011

Bidder

Bidder Address

Karachi

Dear Mr. [Authorized Representative of Bidder]

Confidentiality Agreement

This letter sets out the terms and conditions governing disclosure and exchange of confidential and/or proprietary information (Confidential Information) between GoS and Bidder whereby Bidder intends to explore the possibility of entering into a Concession Agreement for the design, build, finance, operate and transfer of 25 km two lane road and 1.2 km long Bridge over Indus River connecting National Highway (N5) via Jhirk to Tando Muhammad Khan Bathoro Road (the “Project”). This letter and such terms being referred to herein shall constitute “this Agreement”.

Confidential Information means all documents, software, reports, data, records, forms and other materials provided to the Bidder by the GoS or their advisors pursuant to this Agreement:

- **that have been marked as confidential;**
- **whose confidential nature has been made known; or**
- **that due to their character and nature, a reasonable person under like circumstances would treat as confidential.**
- **"Confidential Information" shall not include information that:**
 - **is or becomes publicly known through no wrongful or unlawful act of Bidder;**
 - **is already in Bidder’s possession prior to its disclosure by GoS;**
 - **is independently developed by Bidder without the benefit of confidential Information provided by GoS; or**
 - **is received by Bidder from a third party not known to GoS to be under any restriction or an obligation of confidentiality.**

Private & Confidential

Jhirk Mulla Katiar Bridge Project – Request for Proposal



In consideration of being provided with the Confidential Information, Bidder hereby agrees with GoS on the following terms:

1. The Confidential Information will be used by Bidder solely to explore the possibility of entering into a Concession Agreement with the GoS for the design, build, finance, operate and transfer of 25 km two lane road and 1.2 km long Bridge over Indus River connecting National Highway (N5) via Jhirk to Tando Muhammad Khan Bathoro Road (“Stated Purpose”) and will be kept confidential and will not be disclosed, in whole or in part to any other person, except that the Confidential Information or portions thereof may be disclosed to those of the partners, directors, officers and employees (collectively ‘Representatives’) of Bidder who need to know such information for the Stated Purpose (it being understood that those Representatives will be informed of the confidential nature of the information.).

2. Bidder shall not be deemed to be in breach of this Agreement for any disclosure of Information in confidence to its professional advisers or insurers or as may be required by law or any regulatory authority or professional practice requirements.

3. This Agreement shall continue for one year from the date of this Agreement unless and to the extent that GoS may release it in writing.

4. This Agreement shall be governed by and construed in accordance with the Pakistani law and both parties submit to the exclusive jurisdiction of the Pakistani courts.

Please indicate your acceptance of the terms of this Agreement by signing the enclosed duplicate copy in the space indicated and returning it to us at:

Mushtaque Hussain Memon

Project Manager,

Government of Sindh,

Project Implementation Unit, Jhirk Mulla Katiar Bridge Project.

Barrack No.1 Sindh Secretariat 4-A Court Road, Karachi

We have read this Agreement fully and confirm our agreement with its terms.

Signature:

Name:

Position:

Date:

[duly authorized for and on behalf of Bidder]

DRAFT CONCESSION AGREEMENT

BETWEEN

GOVERNMENT OF SINDH

through

SECRETARY

WORKS & SERVICES DEPARTMENT

And

THE CONCESSIONAIRE

ON XXX XX, 2012

In respect of
the concession to design, build, finance, operate and transfer of

LINK BRIDGE OVER THE RIVER INDUS CONNECTING JHIRK AND MULLA KATIAR

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DRAFT CONCESSION AGREEMENT

THIS CONCESSION AGREEMENT is entered into on this the [●] day of [●], 2011 (“this Agreement”).

BY AND BETWEEN

1. **GOVERNMENT OF SINDH**, through **SECRETARY, WORKS AND SERVICES DEPARTMENT**, having its offices at 3rd Floor, Sindh Secretariat, Karachi acting through Secretary to Government of Sindh, Works and Services Department (hereinafter referred to as the “**GOS**”);
2. [●], a [●] company incorporated under the laws of Pakistan, having its registered office at [●] (hereinafter referred to as the “**Concessionaire**”, which expression shall, where the context so permits, be deemed to mean and include its successors-in-interest and permitted assigns).

(the Government of Sindh and the Concessionaire are hereinafter referred to as the “**Parties**”)

WHEREAS:

- a. To cater to the vehicular traffic to pass over the river Indus connecting areas of Jhirk and Mulla Katiar thereby connecting the constructed bridge to the National Highway in Jhirk to Tando Muhammad Khan Bathoro Road through current road network, the GoS has decided to design, rehabilitate, construct and develop, through Public Private Partnership on a design, build, finance, operate and transfer (“**DBFOT**”) basis the bridge (as defined hereinbelow) along with the Project Facilities (as defined hereinbelow) in accordance with certain identified specifications and the subsequent operation and maintenance of the same.
- b. On December 13, 2011 a Request for Proposals (“**RFP**”) was published by the GoS for the prospective bidders and on [●] and a consortium comprising of [●], [●], [●] and [●] (“**Consortium**”) was initially shortlisted and subsequently selected in reliance upon the Procurement Rules and other Government Rules, Policies & Acts. The Letter of Intent was issued to the Consortium on [●].
- c. The Concessionaire was incorporated by the Consortium, in accordance with the provisions of Applicable Law (i) in order to enable the Parties to enter into this Agreement and for the Concessionaire to seek the grant of the Concession and for the GoS to grant the Concession and (ii) for the specific purpose of implementing the Project on a DBFOT Basis; in accordance with the terms of this Agreement.
- d. The Concessionaire acknowledges and confirms that it has undertaken a due diligence audit of all aspects of the Project, including technical and financial viability, legal due diligence, and on the basis of its independent satisfaction is entering into this Agreement for the purpose of accepting the Concession and for the implementation of the Project at its cost and expense in accordance with the terms and conditions of this Agreement.
- e. The Parties are now entering into this Agreement to set out the terms and conditions applicable to the Concession and the relationship of the GoS and the Concessionaire.

NOW THIS AGREEMENT WITNESSETH and it is hereby agreed and declared as under:



ARTICLE 1 INTERPRETATION

Section 1.1 Definitions

In this Agreement, unless the context shall otherwise require:

- 1.1.1 **“AASHTO Standards”** means the standards applicable to roads and highways as set out in the relevant publication of the American Association of State Highway and Transportation Officials;
- 1.1.2 **“Act”** means the Sindh Public Private Partnership Act, 2010, as amended from time to time and shall include all future enactments in replacement thereof;
- 1.1.3 **“Accounting Year”** means in respect of each Party, the financial year commencing from 1st day of July of any calendar year and ending on 30th day of June of the next calendar year;
- 1.1.4 **“Additional Cost”** means the additional capital expenditure and / or the additional operating cost or additional taxes or both as the case may be, which the Concessionaire has or would be required to incur and which has / have arisen as a consequence of Change of Scope or Change of Law;
- 1.1.5 **“Additional Facilities”** means the facilities such as service stations, motels, restaurants, shopping areas and amusement parks which the Concessionaire may, at its discretion and subject to Applicable Laws, provide or procure for the benefit of the Users, and that are in addition to the Project Facilities, and are not situated on the Project Site;
- 1.1.6 **“Affected Party”** has the meaning ascribed thereto in Section 21.1 (*Force Majeure Events*);
- 1.1.7 **“Agreement Date”** means the date of signing of this Agreement;
- 1.1.8 **“Annuity Amount”** means the annual payment that GoS has to make to the Concessionaire on a quarterly basis against satisfactory services rendered under this agreement; it shall constitute of:
 - a) the Agreed Operations & Maintenance expense for that year;
 - b) the Debt payment amount for that year (including both Principal repayment and interests payment);and
 - c) the Agreed Amount for that year to fulfill the equity return
- 1.1.9 **“Annuity Adjustment formula”** means the formula for adjusting the Annuity Amount upon the occurrence of Non performance by the Concessionaire, set out in Schedule L (*Annuity Amount Formula*);
- 1.1.10 **“Annuity Payment Date”** means each such date on which the Annuity Amount shall be paid by the GoS to the Concessionaire, being the dates set out in the Annuity Amount Payment Schedule;



- 1.1.11 **“Annuity Payment Period”** means consecutive periods of three hundred and sixty five (365) days with the first such period commencing on the Business Day immediately following the Project Completion Date and continuing till the final expiry date or the termination date whichever may occur earlier;
- 1.1.12 **“Annuity Amount Payment Schedule”** means the schedule setting out the Annuity Amount Payment dates and attached herewith as Schedule K (*Annuity Amount Payment Schedule*);
- 1.1.13 **“Applicable Laws”** mean all laws, promulgated or brought into force and effect by the GOS or the Government of Pakistan as the case may be including regulations and rules made thereunder, and judgments, decrees, injunctions, writs and orders of any court of record, as may be in force and effect during the subsistence of this Agreement;
- 1.1.14 **“Applicable Permits”** means all clearances, permits, authorizations, consents and approvals under or pursuant to Applicable Laws, required to be obtained and maintained by the Concessionaire, in order to implement the Project and to provide Project Facilities in accordance with this Agreement;
- 1.1.15 **“Applicable Standards”** means the standards that are applicable to any particular aspect of the Concession and / or the Project and shall include the AASHTO Standards;
- 1.1.16 **“Arbitration Act”** mean the Arbitration Act, 1940 and shall include modifications to or any re-enactment thereof as in force from time to time;
- 1.1.17 **“Associate”** or **“Affiliate”** shall mean, in relation to either Party and/or Consortium, a person who controls, is controlled by, or is under the common control with such Party and/or the Consortium (as used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise);
- 1.1.18 **“Authorised Representative”** has the meaning ascribed thereto in sub-section of 13.1.2 of Section 13.1 (*Commencement of Construction Works*);
- 1.1.19 **“Base Case”** means the projections of cash flows contained in the Financial Model used to compute the Base Case Equity IRR;
- 1.1.20 **“Base Case Equity IRR”** means XX% as contained in the Financial Model;
- 1.1.21 **“Base Price”** means the price of the Escalable Items as stated in the Financial Model;



1.1.22 **“Bid Security”** means the bank guarantee submitted by the Concessionaire and / or the Consortium as the case may be, in connection with its bid for the concession rights which shall remain in effect, until replaced by the Performance Security;

1.1.23 **“Board Resolution”** means a resolution passed by the Board of Directors of the Concessionaire authorizing the Concessionaire to *inter alia* enter into this Agreement;

1.1.24 **“Bridge”** means the approximately 1200 m bridge connecting Highway N5 (Jhirk side) to Tando Muhammad Khan Bathoro Road or vice versa over the river Indus including the relevant connecting Roads, bridges and civil works thereon as further detailed in **Error! Reference source not found.** (*Details of the Bridge*);

1.1.25 **“Building Line”** means the line notified under the West Pakistan Highways Ordinance 1959 or as declared by the GoS established under Section 3 of the Highways Ordinance 1959;

1.1.26 **“Change in Law”** means the occurrence of any of the following events after the date of the Agreement:

- (a) the enactment of any new federal, provincial or local government law as applicable in the Province of Sindh;
- (b) the repeal, modification or re-enactment of any existing federal, provincial or local government law as applicable in the Province of Sindh;
- (c) the commencement of any federal, provincial or local government law which has not entered into effect until the date of this Agreement;
- (d) a change in the interpretation or application of any Pakistani law as applicable in Sindh by a court of record as compared to such interpretation or application by a court of record prior to the date of this Agreement; or

Provided that any:

- (i) imposition of new Taxes, duties, cess and the like and/or the increase in taxes, duties, cess and the like effected from time to time by any GoS, and / or;
- (ii) imposition of standards and conditions of operations, maintenance and arising out of a new or revised environmental law; and / or
- (iii) imposition of standards and terms of employment and working conditions of labourers and workmen; and / or

shall not constitute a Change of Law.

1.1.27 **“Change in Ownership”** means any transfer in the direct and / or indirect or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the Consortium,



together with its Associates (if any), in the total Equity to decline below (a) 51% (fifty one per cent) thereof during Construction Period; and (b) two (2) years thereafter; provided that any material variation (as compared to the representations made by the Concessionaire during the bidding process for the purposes of meeting the minimum conditions of eligibility or for evaluation of its application or Bid, as the case may be,) in the proportion of the equity holding of the Consortium to the total Equity, if it occurs prior to completion of a period two years after COD, shall constitute Change in Ownership;

1.1.28 **“Change of Scope”** has the meaning ascribed thereto in Section 16.1 (*Change of Scope*);

1.1.29 **“Commencement Date”** means a date occurring no later than fifteen (15) days of the peaceful, vacant and physical possession of the Project Site is handed over by the GoS to the Concessionaire in accordance with the terms of this Agreement; provided however the Commencement Date shall only occur upon the issuance of a Commencement Certificate by the Independent Engineer;

1.1.30 **“Commencement Certificate”** means a certificate to be issued in writing by the Independent Engineer to the Concessionaire and copied to the GoS confirming that (a) the Conditions Precedent have been fulfilled by each Party and / or have been waived in accordance with the terms of this Agreement; and (b) the peaceful, vacant and physical possession of the Project Site has been handed over by the GoS to the Concessionaire in accordance with the terms of this Agreement;

1.1.31 **“Commercial Operations Date”** means the date Operations and Maintenance regime of the Concession starts after the project is awarded Final Project Completion Certificate by the Independent Engineer;

1.1.32 **“Completion Certificates”** means:

- (a) the Substantial Completion Certificate; and
- (b) the Final Project Completion Certificate;

1.1.33 **“Project Completion Check List”** has the meaning ascribed thereto in Section 14.3(*Substantial Completion Certificate*);

1.1.34 **“Project Completion Check List Items”** has the meaning ascribed thereto in sub-section 14.4.1 of Section 14.4 (*Project Completion Check List*);

1.1.35 **“Concession”** has the meaning ascribed thereto in sub-section 2.1.1 of Section 2.1 (*Grant of Concession*);

1.1.36 **“Concession Period”** means, in respect of the Project, the Bridge and the relevant connecting Roads, the Project Site, the Project Facility and all Project Assets, commencing on the Commencement Date and ending on the earlier to occur of (a) the Termination Date; or (b) the Final Expiry Date;



- 1.1.37 **“Conditions”** means the Conditions Precedent and the Conditions Subsequent set out in Article 3 (*Conditions*);
- 1.1.38 **“Conditions Precedent”** means the conditions precedent to the effectiveness of this Agreement listed in sub-section 3.1.2 and 3.1.3 of Section 3.1 (*Conditions Precedent*);
- 1.1.39 **“Conditions Subsequent”** means the conditions subsequent listed in Section 3.2 (*Conditions Subsequent*);
- 1.1.40 **“Construction Cost Component”** means the component of the Pre-Estimated Project Cost that constitutes the pre-estimated costs for the Construction Period, as set out in the Financial Model;
- 1.1.41 **“Construction Period”** means the period commencing on the Commencement Date and ending on the date of issuance of the Final Project Completion Certificate;
- 1.1.42 **“Construction Period Damages”** has the meaning ascribed thereto in Section 14.5 (*Construction Period Damages*);
- 1.1.43 **“Construction Period Insurances”** means the Insurances procured and / or obtained by the Concessionaire and / or a Contractor pursuant to the provisions of and / or in accordance with Section 20.1 (*Construction Period Insurance*);
- 1.1.44 **“Construction Requirements”** means the requirements as to construction of the Bridge, the relevant connecting roads and the Project Facilities set forth in Schedule I (*Construction Requirements*);
- 1.1.45 **“Construction Works”** means:
- (a) construction, alteration, repair, restoration, maintenance, extension, demolition or dismantling of buildings or structures, forming or to form, part of land (whether permanent or not);
 - (b) construction, alteration, repair, restoration, extension, demolition or dismantling of any work forming or to form, part of land, including walls, roadworks, bridges, power-lines, telecommunication apparatus, inland waterways, pipelines, reservoirs, water mains, wells, sewers, industrial plant and installations for the purposes of land drainage or coast protection;
 - (c) the installation in any building, structure or works of fittings, forming or to form, part of land, including heating, lighting, air-conditioning, ventilation, power supply, drainage, sanitation, water supply, fire protection, security and communication systems, the external or internal cleaning of buildings, structures or works, so far as it is carried out in the course of their construction, alteration, repair, restoration, maintenance or extension;
 - (d) any operation which forms an integral part of, or is preparatory to or is for rendering complete, work of the kind referred to in (a), (b) or (c) above, including:



- (i) site clearance, earth-moving, excavation, tunneling and boring; and
 - (ii) the laying of foundations, piling, sub-structure, super-structure;
 - (iii) the erection, maintenance or dismantling of scaffolding; and
 - (iv) the prefabrication of components to form part of any building, structure or works, whether carried out on-site or off-site; and
- (e) site restoration, landscaping and the provision of roadways and other access works;
- (f) the painting or decorating of the internal or external surfaces of any building, structure or works; and
- (g) any other work of a kind prescribed for the purposes of this subsection;

provided however "Construction" does not include any of the following work:

- (a) the drilling for, or extraction of, oil or natural gas;
- (b) the extraction (whether by underground or surface working) of minerals, including tunnelling or boring, or constructing underground works, for that purpose;

1.1.46 **"Contractor"** means a reputed Person with whom the Concessionaire has entered or may enter into a contract in respect of the Construction Works and shall include sub-contractors, contractors for equipment procurement and engineering, contractors for operation and maintenance, service providers and suppliers and / or any other contractors and sub-contractors, manufacturers or suppliers of equipment and works in relation to the Project and / or the Construction Works or part thereof as the context may require or admit;

1.1.47 **"Corporate Documents"** means the constitutional documents and the corporate authorizations set out in Schedule E (Corporate Documents);

1.1.48 **"Corrupt Act"** means:

- (a) offering, giving or agreeing to give to GOS, Government Agency and/or Government Authority or to any person employed by or on behalf of GOS Government Agency and/or Government Authority any gift or consideration of any kind as an inducement or reward:
 - (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Concession Agreement or any other contract with GOS, Government Agency and/or Government Authority; or
 - (ii) for showing or not showing favour or disfavor to any person in relation to this Concession Agreement or any other contract with GOS, Government Agency and/or Government Authority;



- (b) entering into this Concession Agreement or any other contract with GOS, Government Agency and/or Government Authority in connection with which commission has been paid or has been agreed to be paid by the Concessionaire or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment of such commission have been disclosed in writing to GOS;
- (c) committing any offence:
 - (i) under any law from time to time dealing with bribery, corruption or extortion;
 - (ii) under any law creating offences in respect of fraudulent acts; or
 - (iii) at common law, in respect of fraudulent acts in relation to this Concession Agreement or any other contract with GOS or any other public body; or
- (d) defrauding or attempting to defraud or conspiring to defraud GOS or any other public body.

1.1.49 **“Cure”** shall mean curing of breach or default of the Agreement by the party responsible for such breach or default;

1.1.50 **“Cure Period”** mean the period specified in this Agreement for curing any breach and or default of any provision of this Agreement by the Party in breach and / or default of such provision;

1.1.51 **“Damages”** means the Construction Period Damages and the O&M Damages;

1.1.52 **“Debt Due”** means the aggregate of the following sums expressed in Pak Rupees outstanding and payable to the Lenders pursuant to the Financing Documents:

- (a) the principal amount of the debt provided by the Lenders under the Financing Documents for financing the Project (the “principal”) which is outstanding as on the Termination Date but excluding any part of the principal that had fallen due for repayment one year prior to the Termination Date unless such repayment had been rescheduled with the prior consent of the GoS; and
- (b) all accrued interest, financing fees and charges payable on or in respect of the debt referred to in sub-section (a) above up to the date preceding the Termination Date but excluding (i) any interest, mark up, fees or charges that had fallen due one year prior to the Termination Date, and (ii) penal interest or charges payable under the Financing Documents to the Lenders.

1.1.53 **“Defects Liability Period”** means a period of twenty-four (24) months in respect of the works after the date of issuance of the Final Project Completion Certificate;



- 1.1.54 **“Design Requirements”** means the design requirements of the Project and the Project Facilities set out in Schedule H (*Design Requirements*);
- 1.1.55 **“Dispute”** shall have the meaning as ascribed thereto in sub-section 30.1.1 of Section 30.1 (*Dispute Resolution*);
- 1.1.56 **“Dispute Resolution Procedure”** means the procedure for resolution of Disputes as set out in Section 30.1 (*Dispute Resolution*);
- 1.1.57 **“Drawings”** means the drawings, designs, calculations and documents in compliance with the Design Requirements, pertaining to the Project and the Project Facilities and detailed in Schedule-N, as amended from time to time by the Concessionaire in accordance with the terms of this Agreement, with the approval of the Independent Engineer;
- 1.1.58 **“Escalable Price”** means the escalated price of the Escalable Items as defined in Section 13.9 (*Escalation*);
- 1.1.59 **“Escalable Items”** include cement, bitumen, steel and POL of construction machinery and equipment;
- 1.1.60 **“Effective Date”** means the earlier to occur of the date on which the Independent Engineer confirms that the Conditions Precedent are satisfied by the Parties in accordance with Section 3.1 (*Conditions Precedent*);
- 1.1.61 **“Emergency”** means a condition or situation that is likely to endanger the security of the individuals on or about the Project including Users thereof or which poses an immediate threat of material damage to any of the Project Assets;
- 1.1.62 **“Emergency De-commissioning”** has the meaning ascribed thereto in Section 19.10 (*Emergency De-commissioning*);
- 1.1.63 **“Encumbrance”** means any encumbrance on an asset, including but not restricted to mortgage, charge, pledge, lien, hypothecation and / or any security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations and shall include without limitation any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Bridge, the Bridge and the relevant connecting Roads, the Project, the Project Facility, the Project Assets, the Project Site and / or any part or portion thereof and physical encumbrances and encroachments thereon;
- 1.1.64 **“Equity”** means the share capital of the Company (Special Purpose Vehicle) created by the Concessionaire to undertake the project and its scope, represented in PKR, subscribed to by any of the Company’s shareholders for meeting the equity component of the Total Project Cost; it shall consist of two classes of shares;

“Class A share” means share capital issued to the developer which shall be liable for Non Performance and be the main recipient of Base Case IRR against construction



and O&M of the project. Moreover, these will be recipient of Termination Payment as well provided however; that for purposes of calculating the Termination Payment, the term "Equity" shall exclude the following:

- (a) the Incremental Project Cost, unless such Incremental Project Cost has been incurred with the approval of the Lenders and the GoS;
- (b) all amounts comprising injections to the Equity effected after Project Completion

"Class B share" means share capital issued to the GOS which shall not be liable for Non Performance under any circumstances whatsoever and it shall have the undisputed right to collect toll on the Bridge, the Project Site and Project Facilities. Plus, it shall also have the Commercial Rights over the project which shall include but not limited to Advertising revenues;

1.1.65 "**Event of Default**" means, as the context may require:

- (a) the Concessionaire Event of Default; and
- (b) the GoS Event of Default;

1.1.66 "**Expiry Date**" means the twenty-seventh (27th) anniversary of the Commencement Date;

1.1.67 "**Final Expiry Date**" means the date on which the Concession shall expire and all rights and concessions granted to the Concessionaire by GoS pursuant to the terms of this Agreement that remain valid as on such date and have not expired and / or been terminated prior to the occurrence of such date, shall cease to have effect and shall revert back to the GoS provided however the Final Expiry Date shall occur no later than the twenty-seventh (27th) anniversary of the Commencement Date. However, the GoS and the Concessionaire may agree to extend the concession period with mutual consent;

1.1.68 "**Final Project Completion Certificate**" has the meaning ascribed thereto in Section 14.6 (*Final Project Completion Certificate*);

1.1.69 "**Financing**" means the finance facilities, loans, advances, financial accommodation and / or arrangement, subscription and / or issuance of debentures / bonds / redeemable capital, risk participation, take out financing and / or any other financial obligation availed by the Concessionaire from the Lenders in respect of the Project, pursuant to the Financing Documents;

1.1.70 "**Financing Documents**" means the agreements entered into by the Concessionaire in respect of the Financing and shall include, but not be restricted to, loan agreements, lease agreements, hire purchase agreements, notes, indentures, security agreements, or arrangements, guarantees, acceptable letters of credit and other agreements evidencing any obligation of the Concessionaire and other necessary undertakings required pursuant to the respective terms thereof,



relating to any financing or refinancing for the Project or any portion thereof, in each case as amended, supplemented or otherwise modified from time to time;

- 1.1.71 **“Financing Period”** means the period during which the Financing subsists and the Concessionaire is not in default of the Financing Documents;
- 1.1.72 **“Financial Close”** means the date on which the Financing Documents shall become effective in terms thereof and the Concessionaire has immediate access to the Financing;
- 1.1.73 **“Financial Model”** means the financial model attached herewith as **Schedule O** (*Financial Model*);
- 1.1.74 **“Force Majeure Event”** means the occurrence in Pakistan of any or all of the Non Political Events, the Indirect Political Event and/or the Political Events;
- 1.1.75 **“Force Majeure Period”** means, as determined by the Independent Engineer, the period commencing from the date of occurrence of a Force Majeure Event and ending on (a) the date on which the Affected Party, acting in accordance with Good Industry Practice resumes or should have resumed such of its obligations the performance of which was excused in terms of Section 21.8 (*Excuse from Performance Obligations*); or (b) the Termination Date; as applicable;
- 1.1.76 **“Good Industry Practice”** mean the practices, methods, techniques, standards, skills, diligence and prudence which are generally and reasonably expected of and accepted internationally from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Agreement and acting generally in accordance with the provisions of the Pakistan standards and laws, and would mean good engineering practices in the design, engineering, construction and project management and which would be expected to result in the performance of its obligations by the Concessionaire and in the operation and maintenance of the Project in accordance with this Agreement, Applicable laws, Applicable Permits, reliability, safety, environment protection, economy and efficiency;
- 1.1.77 **“GOS Transportation Programme”** means [*details to be provided*];
- 1.1.78 **“GoS Permits”** means the Applicable Permits required to be obtained and / or procured by the GoS in relation to the Project and listed in Schedule F (*GoS Permits*);
- 1.1.79 **“Government Agency”** means any governmental department, commission, board, body, bureau, agency, authority, instrumentality, court or other judicial or administrative body having jurisdiction over the Concessionaire, the Project Assets or any portion thereof, or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement;



- 1.1.80 **“Incremental Project Costs”** means all costs incurred in relation to the Project that are in excess of the Pre Estimated Project Costs as specified in the Financial Model;
- 1.1.81 **“Independent Auditor”** is the auditor appointed by the Concessionaire in accordance with Article 6 (*Independent Auditor*);
- 1.1.82 **“Independent Engineer”** is the engineer appointed by the Concessionaire in accordance Article 5 with (*Appointment of Independent Engineer*);
- 1.1.83 **“Independent Engineer Appointment Term”** shall have the meaning ascribed thereto in sub-section 5.2.1 of Section 5.2 (*Term of Appointment of the Independent Engineer*);
- 1.1.84 **“Independent Engineer Contract”** is the contract entered into between the Concessionaire and the Independent Engineer in accordance with Article 5 (*Appointment of Independent Engineer*);
- 1.1.85 **“Independent Engineer Payments”** has the meaning ascribed thereto in Section 5.5 (*Remuneration of the Independent Engineer*);
- 1.1.86 **“Independent Engineer Terms of Reference”** means the duties and functions and the scope of work to be performed by the Independent Engineer, as set out in the terms of reference attached herewith as Schedule M (*Independent Engineer Terms of Reference*);
- 1.1.87 **“Indirect Political Event”** means any one or more of the following events which prevent the Affected Party from performing its obligations under this Agreement, for a continuous period of not less than fifteen (15) days from the date of its occurrence:
- (a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion, or politically motivated sabotage which prevents the Concessionaire from performing its duties for a period exceeding a continuous period of 30 days in an Accounting Year;
- 1.1.88 **“Initial Concession Permits”** means the Concession Permits listed in Part A of Schedule E (*Concession Permits*);
- 1.1.89 **“Inspection Report”** has the meaning ascribed thereto in Section 13.5 (*Inspection*);
- 1.1.90 **“Insurances”** means all insurances, reinsurance, agreements of insurance and reinsurance and / or arrangement for insurance and / or reinsurance in relation to the Project, the Project Assets, the Project Site, the Project Facility, the Construction Works and / or any part or portion thereof, procured by the Concessionaire and / or a Contractor, including the O&M Contractor, in relation to the Project, including but



not restricted to the Construction Period Insurance and the Operation Period Insurance;

1.1.91 **“Lenders”** means the financial institutions, banks, funds, trusts or trustees of the holders of debentures or other securities their successors and assigns, that extend finance facilities and / financial accommodation to the Concessionaire pursuant to the Financing Documents;

1.1.92 **“Maintenance Manual”** has the meaning ascribed thereto in Section 19.7 (*Maintenance Manual*);

1.1.93 **“Maintenance Programme”** has the meaning ascribed thereto in Section 19.8 (*Maintenance Programme*);

1.1.94 **“Material Adverse Effect”** means, in the opinion of the Independent Engineer, there has occurred or could reasonably be expected to occur an effect, event, matter or circumstance or a change in the circumstances which materially and adversely impairs:

- (a) the business, operations, property, assets, present or future condition (financial or otherwise) or prospects of the Concessionaire or any Project Party;
- (b) the ability or probability (financial or otherwise) of the Concessionaire or any Project Party to perform and observe its obligations under the Transaction Documents;
- (c) the legality, validity or enforceability of, or the rights or remedies of the GoS under this Agreement; or
- (d) the Concessionaire’s ability to construct, operate and maintain the Project in accordance with the terms of the Project Documents;

1.1.95 **“Material Breach”** shall mean breach by either Party of any of its obligations under this Agreement which has/ likely to have a Material Adverse Effect on the Project and which such Party shall have failed to cure within the Cure Period;

1.1.96 **“Maintenance Requirements”** means maintenance requirements for the maintenance of the Project as prescribed by the AASHTO Standards;

1.1.97 **“Non Performance”** means the difference between the Annuity Amount and the unavailability of the Bridge or the Project Facility during any Annuity Amount Payment Period, with such Non Availability to be measured as follows:

- (a) in terms of the sum total lanes lane kilometer hours for which the Bridge and the relevant connecting Roads or any portion thereof, as the case may be is unavailable; or/and
- (b) the Independent Engineer deems Non-performance on the part of the developer and he is not able to satisfactorily prove that the Non-performance didn’t occur due to its negligence, incompetence, corruption or any other deliberate act



Non- performance deductions shall be a consequence of the Concessionaire failing to perform its obligations as contained herein than the right of the Concessionaire to receive the Annuity Amount Payments shall stand proportionately reduced; except when such Non Performance arises as a consequence of the Permitted Events and / or the GoS Events of Default.

1.1.98 **“Non-Political Event”** means any one or more of the following events which prevent the Affected Party from performing its obligations under this Agreement, for a continuous period of not less than fifteen (15) days from the date of its occurrence

- (a) acts of God or events beyond the reasonable control of the Affected Party which could not reasonably have been expected to occur, exceptionally adverse weather conditions, lightning, earthquake, cyclone, flood, volcanic eruption or fire (to the extent originating from a source external to the Project Site or beyond design specifications for the Construction Works) or landslide;
- (b) radioactive contamination or ionizing radiation;
- (c) strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/representatives or attributable to any act or omission of any of them or any one of them) interrupting supplies and services to the Project for a period exceeding fifteen (15) days in an Accounting Year, and not being an Indirect Political Event;
- (d) any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- (e) any event or circumstances analogous to any of the foregoing;

1.1.99 **“O&M Cost Component”** means the component of the Pre- Estimated Project Cost that constitute the pre-estimated costs for the Operation Period, as set out in the Financial Model;

1.1.100 **“O&M Contract”** means the contract entered into or that may be entered into by the Concessionaire for the provision of the Operation and Maintenance in accordance with O&M Requirements;

1.1.101 **“O&M Contractor”** means the Person of repute with whom the Concessionaire has entered into or may enter into the O&M Contract;

1.1.102 **“O&M Damages”** has the meaning ascribed thereto in Section 19.11(*O&M Damages*);

1.1.103 **“O&M Expense”** means the expenses incurred by or on behalf of the Concessionaire, as duly certified by the Independent Auditor for all regularly scheduled and reasonably anticipated Operation and Maintenance in accordance with the O&M Requirements, in accordance with the terms of this Agreement, during the Operation Period, including but not restricted to:



- (a) the cost of salaries and other employee compensation and contract fee payable to the O&M Contractor, if any;
- (b) cost of materials, supplies, utilities and other services;
- (c) premium for Insurances, including the Operation Period Insurances;
- (d) all franchise, excise, property and other similar taxes and all costs and fees incurred in order to obtain and maintain all Applicable Permits necessary for the Operation and Maintenance of the Project in accordance with the O&M Requirements;
- (e) all repair, replacement and maintenance costs of the Project and the Project Facility; and
- (f) all other expenditures required to be incurred under Applicable Law or under Applicable Permits necessary for the Operation and Maintenance of the Project and the Project Facility according to the Project Requirements at its full design capacity;

1.1.104 **“O&M Requirements”** means the requirements as to operation and maintenance of the Project and the Project Facilities as set out in Schedule-J;

1.1.105 **“Operation Period”** mean the period commencing on the Project Completion Date and ending on the Final Expiry Date;

1.1.106 **“Operation Period Insurance”** means the Insurances procured and / or obtained by the Concessionaire and / or a Contractor, including the O&M Contractor, pursuant to the provisions of and / or in accordance with Section 20.2 (*Operation Period Insurance*);

1.1.107 **“Operation and Maintenance”** means the operation and maintenance of the Project and the Project Facilities in accordance with the O&M Requirements and subject to the terms of this Agreement, during Operation Period including but not limited to functions of maintenance, and performance of other services incidental thereto as set out in this Agreement;

1.1.108 **“Outstanding Concession Permits”** means the Concession Permits listed in Part B of Schedule E (*Concession Permits*);

1.1.109 **“Performance Security”** means the Performance Security for Construction and the Performance Security for O&M;

1.1.110 **“Performance Security for Construction”** means a first demand irrevocable and unconditional guarantee, issued by a scheduled bank acceptable to the GoS in the form of a demand guarantee or a standby letter of credit, guaranteeing the payment to the GoS of an amount equal to 1% of the Total Project Cost, in the form of the instrument attached herewith as 2.1.1(a)(i)(aa)Schedule P(*Performance Security for Construction*);



1.1.111 **"Performance Security for O&M"** means a first demand irrevocable and unconditional guarantee, issued by a scheduled bank acceptable to the GoS in the form of a demand guarantee or a standby letter of credit, guaranteeing the payment to the GoS of an amount equal to 5% of the O&M Cost for an accounting year that is given three months in advance, in the form of the instrument attached herewith as Schedule Q (*Performance Security for O&M*);

1.1.112 **"Permitted Events"** means:

- (a) Force Majeure Events;
- (b) GoS Events of Default;
- (c) any breach of the terms of this Agreement resulting as a consequence of compliance with the instructions of the Independent Engineer, the GoS or the directions of any Government Authority being instructions or directions issued other than as a consequence of a breach by the Concessionaire of its obligations hereunder;
- (d) Emergency Decommissioning of the Project, the Project Site, the Project Facility and / or the Bridge or any portion thereof, as the case may be;
- (e) closure of the Project, the Project Site, the Project Facility or part thereof and / or the Bridge and the relevant connecting Roads, with the approval of the Independent Engineer and / or the GoS;

1.1.113 **"Person"** shall mean any individual, company, corporation, partnership, joint venture, trust, unincorporated organisation, government or Government Agency or any other legal entity;

1.1.114 **"Political Event"** means one or more of the following acts or events by or on account of the GOS or any other Government Agency, which prevent the Affected Party from performing its obligations under this Agreement, for a continuous period of not less than seven (7) days from the date of its occurrence:

- (a) Change in Law, only when provisions of Article 28 (*Change in Law*) cannot be applied;
- (b) expropriation or compulsory acquisition by any Government Agency of any Project Assets or rights of the Concessionaire or of the Contractors; or
- (c) any unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause any consent or approval required by the Concessionaire or any of the Contractors to perform their respective obligations under the Project Agreements (other than a consent the obtaining of which is condition precedent) provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's or any Contactor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such consents or permits;

1.1.115 **"Pre-Estimated Project Cost"** means the estimated cost of the Project as specified in the Financial Model and being funded through the



proceeds of the Financing and Equity, and comprising of the Construction Cost Component and the O&M Cost Component;

1.1.116 **“Preservation Costs”** has the meaning ascribed thereto in sub-section 13.7.4 of Section 13.7 (*Suspension of Unsafe Construction Works*);

1.1.117 **“Project”** means (a) detailed designing of the Bridge, the relevant connecting Roads and the Project Facilities based on the conceptual designs provided by the GoS; (b) construction of the Bridge, the relevant connecting Roads, and the Project Facilities in accordance with the Applicable Standards, Good Industry Practice and Design Requirements and strictly in compliance with the Project Completion Schedule; (c) Operation and Maintenance of the Bridge, the relevant connecting Roads and the Project Facilities in accordance with the O&M Requirements, Applicable Standards and Good Industry Practice; (d) transfer of the Bridge, the relevant connecting Roads and the Project Facilities to the GoS on the Final Expiry Date in accordance with the terms of this Agreement;

1.1.118 **“Project Account”** means the bank account maintained by the Concessionaire with a bank acceptable to GOS in accordance with Section 10.7 (*Project Account*);

1.1.119 **“Project Agreements”** means:

- (a) this Agreement;
- (b) the Financing Documents;
- (c) the O&M Contract;
- (d) all agreements, contracts and documents entered into between the Concessionaire and the Contractors;
- (e) the Insurances; and
- (f) any other material contract entered into or that may be entered into by the Concessionaire at any time after the date of execution of this Agreement in connection with the Project and designated as a “Project Agreement” with the consent of the GoS;

1.1.120 **“Project Assets”** means and includes all tangible and intangible assets of the Project, The Bridge, the relevant connecting Roads, , the Project Facility and all rights, title, benefits, and easements, whether directly and / or indirectly related thereto, relating to and forming part of the Project including but not limited to (a) rights over the Project Site in the form of license, right of way or otherwise, (b) tangible assets such as civil works including foundations, embankments, pavements, road surface, interchanges, bridges, approaches to bridges and flyovers, road over-bridges, drainage works, lighting facilities, traffic signals, sign boards, milestones, equipment relating to regulation of traffic, road furniture, electrical works for lighting on the Bridge, the relevant



connecting roads, the Project Facility and / or the Project Site, telephone and other communication systems and equipment for the Project, rest areas, wayside amenities, administration and maintenance facilities, relief centres, service facilities etc.; (c) Project Facilities situated on the Project Site; (d) the rights of the Concessionaire under any Project Agreement; (e) financial assets, such as security deposits for various purposes such as electricity supply, telephone and other utilities, etc.; (f) insurance proceeds subject to Lenders' rights thereto; and (g) Applicable Permits and authorisations relating to or in respect of the Project;

1.1.121 **"Project Construction Completion"** means the date of issuance of the Final Project Completion Certificate;

1.1.122 **"Project Completion Date"** has the meaning ascribed thereto in Section 15.1 (*Project Completion Date*);

1.1.123 **"Project Completion Schedule"** means the schedule attached herewith as Schedule B (*Project Completion Schedule*) setting out:

- (a) the Scheduled Project Completion Date;
- (b) the Project Milestones;

1.1.124 **"Project Completion Tests"** means the tests required to be conducted for the Project Completion, including the Tests listed in **Error! Reference source not found.** (*List of Tests*);

1.1.125 **"Project Engineer"** has the meaning ascribed thereto in sub-section of 13.1.2 of Section 13.1 (*Commencement of Construction Works*)

1.1.126 **"Project Facility"** means the facilities to be constructed, built, installed, erected and / or provided by the Concessionaire on the Project Site as detailed in Schedule C (*Project Facilities*);

1.1.127 **"Project Implementation Unit"** means the project implementation unit established by the GoS in accordance with the provisions of the Act for the purpose of overseeing the day to day implementation of the Project in accordance with the terms of this Agreement and Applicable Laws, particularly during the Construction Period; and shall be headed by the Project Manager;

1.1.128 **"Project Manager"** means the project manager of the Project Implementation Unit, appointed in accordance with the terms of the Act;

1.1.129 **"Project Milestones"** means the progressive milestones in respect of the Project and the dates for achievement of each such milestone;

1.1.130 **"Project Party"** means the Concessionaire, the Sponsor and / or any Contractor, as the case may be;



- 1.1.131 **“Project Requirements”** means the Design Requirements, Construction Requirements, and the O&M Requirements;
- 1.1.132 **“Project Site”** means the site on which the Project is to be implemented comprising of the immovable property including the right of way on which the Project Facilities are to be constructed, built, installed, erected and / or provided by the Concessionaire, in accordance with the terms of this Agreement, and the particulars whereof are detailed in Schedule R (*Details of Project Site*);
- 1.1.133 **“Project Works”** means all Construction Works undertaken and provided and / or to be provided by the Concessionaire during the Construction Period and the Operation and Maintenance provided and / or to be provided by the Concessionaire during the Operation Period; both in accordance with the terms of this Agreement, Applicable Laws and Goods Industry Practice;
- 1.1.134 **“PKR” or “Pak Rupees”** means the lawful currency of the Islamic Republic of Pakistan;
- 1.1.135 **“Safety Requirements”** has the meaning ascribed thereto in Section 18.1 (*Safety Requirements*);
- 1.1.136 **“Scheduled Project Completion Date”** shall have the meaning set forth in Section 15.2 (*Scheduled Project Completion Date*);
- 1.1.137 **“Sponsors”** means the majority shareholders of the Concessionaire;
- (a) [names of the sponsors to be inserted];
- (b) [names of the sponsors to be inserted];
- (c) [names of the sponsors to be inserted];
- 1.1.138 **“Substitution Agreement”** means the standard form “Substitution Agreement” attached herewith as Schedule V (*Standard Form Substitution Agreement*);
- 1.1.139 **“Substantial Completion Certificate”** means is the certificate issued by the Independent Engineer at the request of the Concessionaire, if the Tests are successful and the Project Assets/Facility can be safely and reliably placed in commercial operation though certain works or things forming part thereof are outstanding and not yet complete. In such an event, the Substantial Completion Certificate shall have appended thereto a list of outstanding items signed jointly by the Independent Engineer and the Concessionaire (the “Project Completion Check List”); provided that the Independent Engineer shall not withhold the Substantial Completion Certificate for reason of any work remaining incomplete if the delay in completion thereof is attributable to the GoS. Substantial Completion Certificate under this Section may, upon request of the Concessionaire to this effect, be issued for operating part of the Project Highway, if at least 75% (seventy five per cent) of the



total length of the Project Highway has been completed and if the movement & safety of the users is not affected.

- 1.1.140 **"Suspension"** has the meaning ascribed thereto in Section 13.7 (*Suspension of Unsafe Construction Works*);
- 1.1.141 **"Termination"** means the termination of the Agreement and the Concession hereunder upon the issuance of a Termination Notice in accordance with the terms hereof;
- 1.1.142 **"Termination Date"** means the date of issuance of the Termination Notice This will be the date on which the actual Termination occurs post Cure Period;
- 1.1.143 **"Termination Dividend Amount"** means return on the equity contribution amount equal to the Base Case Equity IRR for each Accounting Year up to the Termination Date.
- 1.1.144 **"Termination Notice"** means a notice to be issued in writing by a Party notifying the other party of the termination of the Agreement in accordance with the applicable provisions of the Agreement;
- 1.1.145 **"Termination Payment"** means the aggregate of all amounts payable by the GoS to the Concessionaire pursuant to Article 23 (*Termination*);
- 1.1.146 **"Tests"** means the tests to be conducted in accordance with the terms of this Agreement and includes the Tests listed in Schedule U (*List of Tests*);
- 1.1.147 **"Total Project Cost"** means the actual capital cost of the Project upon completion of the Project as certified by the Independent Auditors and accepted by the GoS, but shall not include the Incremental Project Cost;
- 1.1.148 **"Transfer Date"** means the earlier to occur of the Termination Date or the final expiry date;
- 1.1.149 **"Trigger Date"** means and includes, the Final Expiry Date and / or the Termination Date, as the case may be;
- 1.1.150 **"User"** means the person who traverse or travel over or on the Project Facility or any portion thereof.

Section 1.2 Construction

- 1.2.1 In this Agreement, unless the context otherwise requires:
- 1.2.2 references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;



- 1.2.3 references to laws of Pakistan or Pakistan law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of Pakistan and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- 1.2.4 references to a **“person”** and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- 1.2.5 the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- 1.2.6 the words **“include”** and **“including”** are to be construed without limitation and shall be deemed to be followed by **“without limitation”** or **“but not limited to”** whether or not they are followed by such phrases;
- 1.2.7 references to **“construction”** or **“building”** include, unless the context otherwise requires, investigation, design, developing, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and **“construct”** or **“build”** shall be construed accordingly;
- 1.2.8 references to **“development”** include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, up-gradation and other activities incidental thereto, and **“develop”** shall be construed accordingly;
- 1.2.9 any reference to any period of time shall mean a reference to that according to Pakistan Standard Time;
- 1.2.10 any reference to day shall mean a reference to a calendar day;
- 1.2.11 references to a **“business day”** shall be construed as a reference to a day (other than a Sunday) on which banks in Pakistan are generally open for business;
- 1.2.12 any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- 1.2.13 references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;
- 1.2.14 any reference to any period commencing **“from”** a specified day or date and **“till”** or **“until”** a specified day or date shall include both such days or dates; provided that if the last day of any period computed under



this Agreement is not a business day, then the period shall run until the end of the next business day;

- 1.2.15 the words importing singular shall include plural and vice versa;
- 1.2.16 references to any gender shall include the other and the neutral gender;
- 1.2.17 **"indebtedness"** shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- 1.2.18 references to the **"winding-up"**, **"dissolution"**, **"insolvency"**, or **"reorganisation"** of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, arrangement, protection or relief of debtors;
- 1.2.19 save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this sub-section shall not operate so as to increase liabilities or obligations of the GoS hereunder or pursuant hereto in any manner whatsoever;
- 1.2.20 any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Independent Engineer shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party or the Independent Engineer, as the case may be, in this behalf and not otherwise;
- 1.2.21 the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- 1.2.22 references to Recitals, Articles, Sections, Sub-sections or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Sections, Sub-sections and Schedules of or to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears;
- 1.2.23 the Damages payable by either Party to the other of them, as set forth in this Agreement, whether on *per diem* basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and



incurred by the Party entitled to receive the same and are not by way of penalty; and

- 1.2.24 time shall be of the essence in the performance of the Parties' respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.
- 1.2.25 The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.
- 1.2.26 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act 1897 shall not apply.

Section 1.3 Costs for Documents

- 1.3.1 Unless expressly provided otherwise in this Agreement, any documentation required to be provided or furnished by the Concessionaire to the GoS and/or the Independent Engineer or any other relevant person so appointed or nominated by GOS, the Lenders or any other person legally so required shall be provided free of cost and in three (3) copies, and if the GoS and/or the Independent Engineer is required to return any such Documentation with their comments and/or approval, they shall be entitled to retain two (2) copies thereof.

Section 1.4 Measurements and Arithmetic Conventions

- 1.4.1 All measurements and calculations shall be in the metric system and calculations done to two (2) decimal places, with the third digit of five (5) or above being rounded up and below five (5) being rounded down.

Section 1.5 Priority of Agreements, Articles, Sections and Schedules

- 1.5.1 This Agreement, and all other agreements and documents forming part of or referred to in this agreement are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this Agreement, the priority of this Agreement and other documents and agreements forming part hereof or referred to herein shall, in the event of any conflict between them, be in the following order:

- (a) this Agreement;
- (b) the Project Documents;
- (c) all other agreements and documents forming part hereof or referred to herein.

The Agreement at (a) above shall prevail over the agreements and documents at (b) above.

- 1.5.2 Subject to the provisions of sub-section 1.5.1 of this Section 1.5 (*Priority of Agreements, Articles, Sections and Schedules*), in the event of any



ambiguity and / or discrepancies with regard to this Agreement, the following shall apply:

- (a) between two or more Articles and / or Section of this Agreement, the provisions of a specific Article relevant to the issue under consideration shall prevail over those in other Article and / or Section;
- (b) between the Article and / or Section of this Agreement and the Schedules, the Article and / or Section shall prevail unless the issue in question /matter is specifically provided for in the Schedule and only referred to in the Article and / or Section, as the case may be;
- (c) between any two Schedules, the Schedule relevant to the issue shall prevail;
- (d) between the written description on the Drawings and the Project Requirements, the latter shall prevail;
- (e) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and;
- (f) between any value written in numerals and that in words, the latter shall prevail.

ARTICLE 2 CONCESSION

Section 2.1 Grant of Concession

2.1.1 In consideration of the Concessionaire's obligations contained in this Agreement and relying on the Concessionaire's warranties, GoS hereby grants and authorizes the Concessionaire, for the duration of the Concession Period, to investigate, study, design, engineer, procure, finance, construct, develop, operate, maintain the Bridge, the relevant connecting Roads and the Project Facility on a design, build, operate, finance and transfer basis, and to exercise and / or enjoy the rights, powers, benefits, privileges, authorizations and entitlements as set forth in this Agreement ("**Concession**").

2.1.2 The Concessionaire agrees and undertakes to implement the Project in accordance with the terms of this Agreement.

Section 2.2 Concession Period

2.2.1 The Concession hereby granted shall be for the Concession Period and shall come into effect on the Commencement Date.

ARTICLE 3 CONDITIONS

Section 3.1 Conditions Precedent

3.1.1 Save and except as expressly provided herein, the respective obligations of the Parties shall be subject to the satisfaction in full of the conditions precedent specified in sub-section 3.1.2 of this Section 3.1



(*Conditions Precedent*) (“**Conditions Precedent**”) prior to the Effective Date.

3.1.2 The Concessionaire shall satisfy the following Conditions Precedent prior to the Effective Date:

- (a) the Concessionaire has provided copies of the Corporate Documents to the GoS, duly certified as true copies by the Company Secretary of the Concessionaire;
- (b) the Board Resolution duly authorizes:
- (c) the Concessionaire to enter into this Agreement and to undertake the obligations, liabilities as set out in this Agreement and the transactions as contemplated by this Agreement;
- (d) authorizes a specified person or persons to:
- (e) execute this Agreement and the Project Documents on behalf of the Concessionaire; and
- (f) undertake all other acts as contemplated by this Agreement;
- (g) the Performance Security has been provided to the GoS within one hundred and twenty (120) days from the date of submission of the RFP and the same is effective and binding as on the date of execution of this Agreement. Moreover, it remains effective till the end of the defect liability period;
- (h) each of the Concession Permits listed in Part A of Schedule E (“**Initial Concession Permits**”) been procured by the Concessionaire and the same are effective and valid and have not been cancelled and / or rescinded as on the date of execution of this Agreement and the Concessionaire has applied for the Concession Permits listed in Part B of Schedule E (“**Outstanding Concession Permits**”) and the same are expected to be issued by the dates listed against each Outstanding Concession Permit;
- (i) evidence that the Project Account has been established along with a reputable bank approved by the GoS;
- (j) a copy of each of the Initial Concession Permits has been provided by the Concessionaire to GoS;
- (k) the Concessionaire has submitted each of the Condition Precedent Documents to the Independent Engineer;
- (l) the Concessionaire has provided to the GoS:
- (m) a certified true copy of the duly executed term sheet / offer letter in respect of the finance facilities / funding arranged by the Concessionaire;
- (n) drafts of the Finance Documents duly initialed by the Concessionaire and the Finance Parties;
- (o) the GoS has received the following legal opinions:



- (p) a legal opinion from the local legal counsel of the Concessionaire confirming that the Concessionaire has been duly organized and is validly existing under the laws of Pakistan and has the requisite authority and capability to enter into this Agreement and the transactions as contemplated by this Agreement and to assume the obligations as contained herein and the enforceability of the same against the Concessionaire;
- (q) a legal opinion from the legal counsel of the Sponsor confirming that the Sponsor is duly organized and validly existing under the laws of its jurisdiction of incorporation and that the Concessionaire has the requisite authority and capability to enter into the Transactions Documents to which the Sponsor is a party and to assume the obligations as contained therein and the enforceability of the same against the Sponsor.
- (r) Prepare an environment and social assessment report in accordance with Applicable Laws and submit the same to the GoS.

3.1.3 The GoS and the Concessionaire shall satisfy the following Conditions Precedent prior to the Effective Date:

- (a) license the Project Site to the Concessionaire in accordance with Article 4 (*Project Site*);
- (b) enter into the Independent Engineer Contract for the appointment of the Independent Engineer;
- (c) enter into the Independent Auditor Contract for the appointment of the Independent Auditor

Section 3.2 Conditions Subsequent

3.2.1 The Concessionaire undertakes to fulfill the following Conditions Subsequent to the entire satisfaction of the GoS:

- (a) 120 days prior to the Final Completion Date, the Concessionaire shall provide GoS with the O&M Contract;
- (b) 90 days prior to the Final Completion Date, the Concessionaire shall provide GoS with evidence of appointment of the O&M Contractor and a duly certified copy of the O&M Contract duly executed between the Concessionaire and the O&M Contractor.

Section 3.3 Waiver of Conditions

3.3.1 Notwithstanding anything contained herein, the Parties may at their discretion, waive any of the Conditions set forth in Section 3.1 (*Conditions Precedent*) and Section 3.2 (*Conditions Subsequent*). For the avoidance of doubt, it is hereby agreed between the Parties that the GoS may, at its sole discretion, grant any waiver hereunder with such conditions as it may deem fit.



ARTICLE 4 PROJECT SITE

Section 4.1 License

- 4.1.1 The GoS hereby grants to the Concessionaire, a license on an “as-is” basis free of any Encumbrances, in respect of the Project Site along with any buildings, constructions and / or other immovable assets situated and / or located on the Project Site, for the specific and sole purpose of conducting the Construction Works on the Project Site in accordance with the Applicable Standards, Good Industry Practice and the terms and conditions of this Agreement during the Construction Period and for providing the Operation and Maintenance of the Project and the Project Facilities during the Operation Period, together with all and singular rights, liberties, privileges, easements arising out of the said license being granted in terms of this sub-section 4.1.1 of Section 4.1 (*Licence*) and all appurtenances and accessories whatsoever attached to and / or available on the Project Site, hereditaments or premises or any part thereof belonging to or in any way appurtenant thereto or enjoyed therewith (“**Licence**”).
- 4.1.2 The Licence shall commence on the physical handing over of the Project Site to the Concessionaire by the GoS and upon commencement shall be *co-terminus* with the Concession Period.
- 4.1.3 Notwithstanding anything contained in this Agreement, the Concessionaire hereby unconditionally and irrevocably confirms, acknowledges and agrees that the License is being granted to the Concessionaire by the GoS for the sole purpose of implementation of the Project and the Concessionaire shall use the Project Site only for the purposes of implementing the Project thereat and for purposes incidental or necessary thereto subject always to the terms and conditions of this Agreement. The Concessionaire hereby undertakes, that it shall not without the prior written consent of the GoS use the Project Site for any purpose other than for the purposes of implementing the Project in accordance with the provisions of this Agreement and the purposes incidental thereto. The Concessionaire acknowledges, accepts, confirms and agrees that this is an essential condition of the License and this Agreement.
- 4.1.4 The Concessionaire shall not part with or create any Encumbrance on the whole or any part of the Project Site provided however that nothing contained herein shall be construed or interpreted as restriction on the right of the Concessionaire to appoint any Contractor for the performance of its obligations hereunder including for operation and maintenance of all or any part of the Project / Project Facility.
- 4.1.5 It is expressly agreed that the License is *co-terminus* with the Concession Period and shall terminate automatically and forthwith, without the need for any action to be taken by the GoS to terminate the license, upon the Termination of this Agreement for any reason whatsoever.



Section 4.2 Right of Way

- 4.2.1 Notwithstanding anything contained herein the Parties agree that the existing rights of way, easements, privileges, liberties and appurtenances to the Project Site do not constitute and shall not be deemed to constitute and / or be interpreted to constitute Encumbrances.
- 4.2.2 The License shall always be subject to the existing rights of way and the Concessionaire shall perform its obligations in a manner ensuring that the existing rights of way are not obstructed during the Concession Period.

Section 4.3 Use of Project Site

- 4.3.1 The Concessionaire shall not without prior written consent or approval of the GoS use the Project Site for any purpose other than for the purposes of the Project/the Project Facility and purposes incidental thereto as permitted under this Agreement or as may otherwise be approved by the GoS.

Section 4.4 Utilization of Existing Land and procurement of Additional Land

- 4.4.1 The Concessionaire shall, in carrying out its obligations under this Agreement, use its best endeavours to utilise all existing roads and land areas at the Project Site. If however, notwithstanding the best efforts of the Concessionaire it is still necessary to acquire additional land for the purposes of carrying out its obligations under this agreement the Concessionaire shall identify additional land which may be required for purposes of constructing the Project Facility. The GoS will determine the necessity of the same following which it would take all necessary actions to grant to the Concessionaire such rights thereto as may be required by the Concessionaire at the cost and expense of the Concessionaire.
- 4.4.2 The Concessionaire shall not construct or operate any Additional Facilities on the Project Site and may procure at its cost and expense and on its own the land that may be required by it for Additional Facilities and the GoS shall have no obligation or liability in respect thereof. For the avoidance of doubt, the Concessionaire shall seek prior consent of the GoS to connect any Additional Facility to the Project and such consent shall not be unreasonably withheld.

Section 4.5 Reversion of Unutilised Project Site

- 4.5.1 Any Project Site made available to the Concessionaire by the GoS as a consequence of the License that remains non-utilised for the purposes of the Project shall revert to the GoS within three (3) months upon determination of such non-utilisation by the Independent Engineer, and upon issuance of a notice in writing issued by the GoS to the Concessionaire to such effect.



Section 4.6 Protection of Site from encroachments

4.6.1 During the Concession Period, the Concessionaire shall protect the Project Site from any and all occupations, encroachments or Encumbrances, and shall not place or create nor permit any Contractor or other person claiming through or under the Concessionaire to place or create any Encumbrance over all or any part of the Project Site or the Project Assets, or on any rights of the Concessionaire therein or under this Agreement, save and except as otherwise expressly set forth in this Agreement.

Section 4.7 Special/Temporary Right of Way

4.7.1 The Concessionaire shall bear all costs and charges for any special or temporary right of way, that is not included in the Project Scope and description of Project Site and Project Facilities, and is required by the Concessionaire in connection with access to the Project Site.

Section 4.8 Access to the GoS and Independent Engineer

4.8.1 The License granted to the Concessionaire hereunder shall always be subject to the right of access of the GoS and the Independent Engineer and their employees and agents for inspection, viewing and exercise of their rights and performance of their obligations under this Agreement.

Section 4.9 Geological and Archaeological Finds

4.9.1 It is expressly agreed between the Parties that mining, geological or archaeological rights do not form part of the Licence and the Concessionaire hereby acknowledges and agrees that it shall not have any mining rights or interest in the underlying minerals, fossils, antiquities, structures or other remnants or things either of particular geological or archaeological interest and that all such rights, interest and property on or under the Project Site shall vest in and belong to the GoS or the relevant concerned Government Agency.

4.9.2 The Concessionaire shall take all reasonable precautions to prevent its employees, workmen, agents, representatives and/ or any other persons appointed by the Concessionaire and having access to the Project Site, including the Contractors, from removing or damaging such interest or property and shall inform the GoS forthwith of the discovery thereof and comply with such instructions as the GoS and / or the concerned Government Agency may issue in relation to the protection and / or removal of such property. In the event any expenses are incurred by the Concessionaire in fulfilling its obligations as set out in this sub-section 4.9.2 of Section 4.9 (*Geological and Archeological Finds*) than the same shall be reimbursed by the GoS provided the same are duly certified by the Independent Engineer and the Independent Auditor. Notwithstanding anything contained herein the GoS shall use its best efforts for the issuance of the instructions required from the concerned Government Agency and referred to in this sub-section 4.9.2 of Section 4.9 (*Geological and Archeological Finds*).



Section 4.10 Existing Utilities and Roads

4.10.1 Notwithstanding anything to the contrary contained herein, the Concessionaire shall ensure that the respective entities owning the existing roads, right of way and/ or utilities on, under or above the Project Site are enabled to keep such existing roads, right of way and / or utilities in continuous satisfactory use and if necessary the Concessionaire shall provide suitable temporary or permanent diversions with the authority of the controlling body of such existing roads, right of way or utility, and the GoS shall, upon written request from the Concessionaire, initiate and undertake at the Concessionaire's cost, legal proceedings for acquisition of any right of way necessary for such diversion.

Section 4.11 Shifting of Obstructing Utilities

4.11.1 In the event any utility installations, including but not restricted to electric lines, water pipes and telephone cables within the Project Site are creating and / or may result in an obstruction that have a Material Adverse Effect and / or may result in a Material Adverse Effect ("**Obstructing Utilities**") than the Concessionaire may, subject to the Independent Engineer certifying that the such utilities are Obstructing Utilities request the GoS, through the Independent Engineer for the shifting of such Obstructing Utilities to an appropriate location or alignment within or outside the Project Site.

4.11.2 The cost incurred in the shifting of such Obstructing Utilities shall be borne by the GoS subject to the certification of the same by the Independent Engineer.

4.11.3 The GoS shall facilitate the grant of all Applicable Permits required from any Government Agency for the shifting of the Obstructing Utilities, provided however; the GoS shall not be responsible for obtaining the Applicable Permits.

Section 4.12 New Utilities and Roads

4.12.1 The Concessionaire shall allow, subject to such conditions as the GoS may specify, access to, and use of the Project Site for laying telephone lines, water pipes, electric cables or other public utilities. The Concessionaire confirms, agrees and acknowledges that nothing contained in this sub-section 4.12.1 of Section 4.12 (*New Utilities and Road*) shall waive and / or relieve or be deemed to waive and / or relieve the obligations of the Concessionaire contained in this Agreement.

4.12.2 the affected part of the Bridge, the relevant connecting Roads, Project Facility and / or the Project Site, as the case may be, shall be restored at the cost and expenses of the utility companies in accordance with the Applicable Standards and Good Industry Practice.



- 4.12.3 The GoS through its Class B shares exclusively reserves the right to charge fee from the Utility company or any other entity for allowing the passage of its telephone lines, water pipes, electric cables or other public utilities over the bridge.

Section 4.13 Felling of Trees

- 4.13.1 The GoS shall assist the Concessionaire in obtaining the Applicable Permits for felling of trees to be identified by the GoS and the Concessionaire, jointly, for this purpose if and only if such trees cause a Material Adverse Effect. The cost of such felling of trees shall be borne by the GoS.
- 4.13.2 The Parties agree that the felled trees shall be deemed to be owned by the GoS and shall be disposed in such manner and subject to such conditions as the GoS may in its sole discretion deem appropriate.
- 4.13.3 The Concessionaire shall its sole cost and expense undertake to re-plant twenty (20) trees for every one (1) tree felled by the GoS within ninety (90) days of felling of such trees.

ARTICLE 5 INDEPENDENT ENGINEER

- 5.1.1 Within fifteen (15) days from the Effective Date Concessionaire shall provide the GoS with a list of five (5) reputable firms of engineers for appointment of the Independent Engineer in respect of the Project.
- 5.1.2 Within two (2) days of receipt of the list in accordance with Section 5.1.1 above, the GoS shortlist appoint a reputed firm of engineer, and shall cause the Concessionaire to appoint such firm as the Independent Engineer in respect of the Project.
- 5.1.3 In the event the five (5) reputable firms of engineers identified by the Concessionaire in accordance with Section 5.1.1 are not acceptable to the GoS, the GoS may direct the Concessionaire to appoint firm as the Independent Engineer in respect of the Project as may be acceptable to GoS.
- 5.1.4 The Independent Engineer shall provide the services as set out in this Agreement and as requested by the GoS from time to time.

Section 5.2 Term of Appointment of the Independent Engineer

- 5.2.1 The appointment of the Independent Engineer shall be for a term of two (2) years ("**Independent Engineer Appointment Term**").
- 5.2.2 The appointment of the Independent Engineer may be terminated by GoS upon the occurrence of the following events:
- (a) in the sole opinion of GoS, the Independent Engineer fails to fulfill its obligations as set out in the Independent Engineer Contract, on a continuing basis;



- (b) the GoS receives a written request from the Concessionaire seeking the termination of the appointment of an Independent Engineer / replacement of an Independent Engineer as a consequence of the continued failure of the Independent Engineer to discharge its duties and functions in accordance with the Independent Engineer Terms of Reference;
- (c) the Independent Engineer is adjudged insolvent and / or bankrupt and / or the Independent Engineer files winding up proceedings in a court of law and / or any action for malpractice and / or misadministration is filed against the Independent Engineer in a court of law.

5.2.3 Upon the occurrence of any of the events listed in sub-section 5.2.2 of this Section 5.2 (*Term of Appointment of the Independent Engineer*) the GoS shall have the option of dispute resolution pursuant to Section 5.4 (*Dispute Resolution*) and / or terminating the Independent Engineer Contract. In the event the GoS is desirous of terminating the Independent Engineer Contract then the GoS shall replace the appointed Independent Engineer with another consulting engineering firm or body corporate; provided however the termination of the Independent Engineer shall not have effect till such time as the replacement Independent Engineer has been appointed.

5.2.4 GoS shall appoint the replacement Independent Engineer in accordance with the provisions of the Procurement Rules and shall enter into an Independent Engineer Contract with such replacement Independent Engineer. The term of appointment of the replacement Independent Engineer shall be the unexpired period of the Independent Engineer Appointment Term.

5.2.5 GoS shall ensure that all provisions of this Agreement pertaining to the Independent Engineer are duly incorporated in the Independent Engineer Contract.

Section 5.3 Independent Engineer Authorized Signatories

5.3.1 The GoS shall require the Independent Engineer to designate and notify to the GoS and the Concessionaire of the authorized representatives of the Independent Engineer that shall be authorized by the Independent Engineer to sign for and on behalf of the Independent Engineer, and any communication or document required to be signed by the Independent Engineer shall be valid and effective only if signed by such authorized signatories on behalf of the Independent Engineer; provided that the Independent Engineer may, by notice in writing, substitute any of the authorized signatories.

Section 5.4 Dispute Resolution

5.4.1 In the event any dispute arises between the GoS and the Concessionaire with regard to any advice, instruction, decision, direction and / or award of the Independent Engineer than such dispute shall be resolved in accordance with the Dispute Resolution Procedure.



Section 5.5 Independent Engineer Remuneration

- 5.5.1 The Concessionaire shall be solely responsible for the payment of the fees and expenses payable to the Independent Engineer pursuant to the Independent Engineer Contract ("**Independent Engineer Payments**"), notwithstanding that the Independent Engineer shall be appointed by and shall fulfill its obligations in accordance with the terms of the Independent Engineer Contract.
- 5.5.2 The Concessionaire undertakes to affect the Independent Engineer Payments in a diligent and timely manner.

ARTICLE 6 INDEPENDENT AUDITOR

Section 6.1 Appointment

- 6.1.1 Within seven (7) days from the Effective Date Concessionaire shall provide the GoS with a list of five (5) reputable firms of Chartered Accountants for appointment of the Independent Auditor in respect of the Project.
- 6.1.2 Within fifteen (15) days of receipt of the list in accordance with Section 6.1.1 above, the GoS shortlist appoint a reputed firm of Chartered Accountants, and shall cause the Concessionaire to appoint such firm as the Independent Auditor in respect of the Project.
- 6.1.3 In the event the five (5) reputable firms of Chartered Accountants identified by the Concessionaire in accordance with Section 6.1.1 are not acceptable to the GoS, the GoS may direct the Concessionaire to appoint firm as the Independent Auditor in respect of the Project as may be acceptable to GoS.
- 6.1.4 The Independent Auditor shall provide the services as set out in this Agreement and as requested by the GoS from time to time.

Section 6.2 Independent Auditor Remuneration

- 6.2.1 The Concessionaire shall be solely responsible for the fees and expenses payable to the Independent Auditor, notwithstanding that the Independent Auditor shall be appointed by and shall provide its services in accordance with the terms of this Agreement and upon request from the GoS.

ARTICLE 7 GENERAL UNDERTAKINGS

Section 7.1 Concessionaire's Undertakings

- 7.1.1 The Concessionaire shall, at its own cost and expense:
- (a) investigate, study, design, construct, operate and maintain the Project Facility in accordance with the Project Requirements;



- (b) obtain all Applicable Permits in conformity with the Applicable Laws and be in compliance thereof at all time during the Concession Period;
- (c) procure and maintain in full force and effect, as necessary, appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used in or incorporated into the Project;
- (d) ensure and procure that each Project Agreement contains provisions that would entitle the GoS or a nominee of the GoS to step into the same at the discretion of the GoS, in place and substitution of the Concessionaire, pursuant to the provisions of this Agreement or the Substitution Agreement;
- (e) provide all necessary assistance to the Independent Engineer and the Independent Auditor as it may reasonably require for the performance of its duties and services;
- (f) appoint, supervise, monitor and control as necessary, the activities of the Contractors under the respective Project Agreements;
- (g) make all efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of its obligations under this Agreement;
- (h) make its own arrangements for construction materials and observe and fulfill the environmental and other requirements under the Applicable Laws and Applicable Permits;
- (i) be responsible for quality, soundness, durability, safety and the overall Project Requirements notwithstanding the appointment by it of the Contractors to implement and/or operate and maintain the Project Facility;
- (j) ensure that the Project Site remains free from all encroachments and take all steps necessary to remove encroachments, if any;
- (k) make payments to the relevant Government Authority, if required, for provision of such services as are not provided in the normal course or are available only on payment;
- (l) afford access to the Project Site to the authorised representatives of the GoS, the Independent Engineer and any Government Authority having jurisdiction over the Project, including those concerned with safety, security or environmental protection to inspect the Project and to investigate any matter within their authority and upon reasonable notice, the Concessionaire shall provide to such persons assistance reasonably required to carry out their respective duties and functions; and
- (m) obtain at its costs and charges special or temporary rights of way required by the Concessionaire in connection with access to the Project Site. The Concessionaire shall also obtain at its cost such other facilities as may be required by the Concessionaire for the purposes of the Project and the performance of its obligations under this Agreement.

Section 7.2 Undertakings of GoS



7.2.1 GoS hereby undertakes to the Concessionaire that the GoS shall:

- (a) upon the written request from the Concessionaire, and subject to the compliance by the Concessionaire with Applicable Laws;
- (b) provide reasonable support and assistance to the Concessionaire in procuring Applicable Permits required from any Government Agency for implementation and operation of the Project;
- (c) provide reasonable assistance to the Concessionaire in obtaining access to all necessary infrastructure facilities and utilities, including water and electricity at rates and on terms no less favourable to the Concessionaire than those generally available to commercial customers receiving substantially equivalent services;
- (d) ensure peaceful use of the Project Site by the Concessionaire without any let or hindrance from GoS, any person or Government Authority or Agency claiming through or under them;
- (e) assist the Concessionaire in procuring police assistance for regulation of traffic, removal of trespassers and security on or at the Project;
- (f) support, cooperate with and facilitate the Concessionaire in the implementation and operation of the Project in accordance with the provisions of this Agreement; and

7.2.2 upon written request from the Concessionaire and subject to the provisions of Section 10.5 (*Employment of Foreign Nationals*), provide reasonable assistance to the Concessionaire and any expatriate personnel of the Concessionaire or its Contractors to obtain applicable visas and work permits for the purposes of discharge by the Concessionaire or its Contractors their obligations under this Agreement and the Project Agreements.

Section 7.3 No Other Business

7.3.1 The Concessionaire shall not engage in any business or activity other than the business or related to, and conducted for, the purpose of the Project.

ARTICLE 8 REPRESENTATIONS AND WARRANTIES

Section 8.1 Representations and Warranties of the Concessionaire

8.1.1 The Concessionaire represents and warrants to the GoS that:

- (a) it is duly organised and validly existing under the laws of Pakistan, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (b) it has taken all necessary corporate and other actions under Applicable Laws to authorise the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;



- (c) it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement and neither the Concessionaire nor the Consortium or any member thereof has committed a breach in respect of its payment obligations in relation to a financial indebtedness;
- (d) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (e) it is subject to the laws of Pakistan, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- (f) the information furnished in the Bid and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;
- (g) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its and the Consortium's Memorandum and Articles of Association or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (h) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in Equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- (i) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Agency which may result in any material adverse effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- (j) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a material adverse effect on its ability to perform its obligations under this Agreement;
- (k) it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Section 10.3 (*Obligations Relating to Change in Ownership*) and that the Consortium, together with its Associates (if any), hold not less than fifty-one (51) percent of its issued and paid up Equity as on the date of this Agreement; and that each member of the Consortium whose technical and financial capacity was evaluated for the purposes of pre-qualification and short-listing in response to the RFP shall continue to hold such Equity during the Construction Period and five (5) years thereafter along with its Associates (if any);



Provided further that any such request made under Section 10.3 (*Obligations Relating to Change in Ownership*), the GoS at its discretion may require the Concessionaire to accompany such request with no objection letter from Lenders of the Concessionaire;

- (l) the Concessionaire, the Consortium along with its Associates (if any) have the financial standing and resources to fund the required Equity and to raise the debt necessary for undertaking and implementing the Project in accordance with this Agreement;
- (m) the Concessionaire and the Consortium are duly organised and validly existing under the laws of the jurisdiction of its incorporation, and has requested the GoS to enter into this Agreement with the Concessionaire pursuant to the Letter of Award, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- (n) all its rights and interests in the Project shall pass to and vest in the GoS on the Trigger Date, free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or that of the GoS, and that none of the Project Assets shall be acquired by it, subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person, save and except as expressly provided in this Agreement;
- (o) no representation or warranty made by the Concessionaire and contained herein or in any other document furnished by it to the GoS or to any Government Agency in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- (p) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of the GoS in connection therewith; and
- (q) all information provided by the Concessionaire and the Consortium in response to the EOI and RFP or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects.

Section 8.2 Representations and Warranties of the GoS

8.2.1 The GoS represents and warrants to the Concessionaire that:

- (a) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;
- (b) it has taken all necessary actions under the Applicable Laws to authorise the execution, delivery and performance of this Agreement;
- (c) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof; and



- (d) it has good and valid right to the Site, and has power and authority to grant a licence in respect thereto to the Concessionaire.

Section 8.3 Disclosure

8.3.1 In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Party of the same. Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any right, remedy or obligation of either Party under this Agreement.

ARTICLE 9 INDEMNITIES

Section 9.1 General Indemnity

9.1.1 The Concessionaire will indemnify, defend, save and hold harmless the GoS and its officers, servants, agents, Government Agency and Government owned and/or controlled entities/enterprises, ("**GoS Indemnified Persons**") against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature, whether arising out of any breach by the Concessionaire of any of its obligations under this Agreement or any related agreement or on account of any defect or deficiency in the provision of services by the Concessionaire to any User or from any negligence of the Concessionaire under contract or tort or on any other ground whatsoever, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach or default of this Agreement on the part of the GoS Indemnified Persons.

9.1.2 The GoS will indemnify, defend, save and hold harmless the Concessionaire against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature arising out of (i) defect in title and/or the rights of the GoS in the land comprised in the Project Site, and/or (ii) breach by the GoS of any of its obligations under this Agreement or any related agreement, which materially and adversely affect the performance by the Concessionaire of its obligations under this Agreement, save and except that where any such claim, suit, proceeding, action, and/or demand has arisen due to a negligent act or omission, or breach of any of its obligations under any provision of this Agreement or any related agreement and/or breach of its statutory duty on the part of the Concessionaire, its subsidiaries, affiliates, contractors, servants or agents, the same shall be the liability of the Concessionaire.

Section 9.2 Indemnity by the Concessionaire

9.2.1 Without limiting the generality of Article 30 (*Dispute Resolution*), the Concessionaire shall fully indemnify, hold harmless and defend the GoS and the GoS Indemnified Persons from and against any and all loss



and/or damages arising out of or with respect to but not limited to the following:

- (a) failure of the Concessionaire to comply with Applicable Laws and Applicable Permits;
- (b) payment of taxes required to be made by the Concessionaire in respect of the income or other taxes of the Concessionaire's contractors, suppliers and representatives;
- (c) non-payment of amounts due as a result of materials or services furnished to the Concessionaire or any of its Contractors which are payable by the Concessionaire or any of its Contractors.

Section 9.3 Notice and contest of claims

9.3.1 In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 9 (*Indemnities*) ("**Indemnified Party**") it shall notify the other Party ("**Indemnifying Party**") within twenty-one (21) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

Section 9.4 Defense of claims

9.4.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 9 (*Indemnities*), the Indemnifying Party shall be entitled, at its option, to assume and control the defense of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defense. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.



9.4.2 If the Indemnifying Party has exercised its rights under Section 9.3 (*Notice and Contest of Claims*), the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

9.4.3 If the Indemnifying Party exercises its rights under Section 9.3 (*Notice and Contest of Claims*), the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:

- (a) the employment of counsel by such party has been authorised in writing by the Indemnifying Party; or
- (b) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defense of such action; or
- (c) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defence of such action and shall have been so notified by the Indemnified Party; or
- (d) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:
- (e) that there may be specific defenses available to it which are different from or additional to those available to the Indemnifying Party; or
- (f) that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement.

Provided that if sub-section 9.4.3, (b), (c) or (d) of this Section 9.4 (*Defense of Claims*) shall be applicable, then the counsel for the Indemnified Party shall have the right to direct the defense of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

Section 9.5 No Consequential Claims

9.5.1 Notwithstanding anything to the contrary contained in this Article 9 (*Indemnities*), the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

Section 9.6 Survival on Termination

9.6.1 The provisions of this Article 9 (*Indemnities*) shall survive Termination.

ARTICLE 10 OBLIGATIONS OF THE CONCESSIONAIRE



Section 10.1 Obligations of the Concessionaire

- 10.1.1 Subject to the terms and conditions of this Agreement, the Concessionaire shall, at its own cost and expense, procure finance for and undertake the design, engineering, procurement, construction, operation and maintenance of the Project and observe, fulfill, comply with and perform all its obligations as set out in this Agreement and / or arising hereunder.
- 10.1.2 The Concessionaire hereby irrevocably and unconditionally undertakes to fulfill its obligations as set out in this Agreement and to comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.
- 10.1.3 The Concessionaire shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person.

Section 10.2 Obligations relating to Project Agreements

- 10.2.1 It is expressly agreed between the Parties that the Concessionaire shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreement or agreement shall excuse the Concessionaire from its obligations or liability hereunder.
- 10.2.2 The Concessionaire shall submit to the GoS the drafts of all Project Agreements, or any amendments or replacements thereto, for its review and comments, and the GoS shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Concessionaire within thirty (30) days of the receipt of such drafts. Within fifteen (15) days of execution of any Project Agreement or amendment thereto, the Concessionaire shall submit to the GoS a true copy thereof, duly attested by a Director of the Concessionaire, for its record. For the avoidance of doubt, it is hereby agreed between the Parties that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that no review and/or observation of the GoS and/or its failure to review and/or convey its observations on any document shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the GoS be liable for the same in any manner whatsoever.
- 10.2.3 The Concessionaire shall not make any addition, replacement or amendments to any of the Financing Documents without the prior written consent of the GoS if such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the GoS, and in the event that any replacement or amendment is made without such consent, the Concessionaire shall not enforce such replacement or amendment nor permit enforcement thereof against the GoS. For the avoidance of doubt, the GoS acknowledges and agrees that it shall not unreasonably withhold its



consent for restructuring or rescheduling of the debt of the Concessionaire.

10.2.4 The Concessionaire shall procure that each of the Project Agreements contains provisions that entitle the GoS to step into such agreement, in its sole discretion, in substitution of the Concessionaire in the event of Termination or Suspension ("**Covenant**"). For the avoidance of doubt, it is expressly agreed that in the event the GoS does not exercise such rights of substitution within a period not exceeding thirty (30) days from the Trigger Date, the Project Agreements shall be deemed to cease to be in force and effect on the Trigger Date without any liability whatsoever on the GoS and the Covenant shall expressly provide for such eventuality. The Concessionaire expressly agrees to include the Covenant in all its Project Agreements and undertakes that it shall, in respect of each of the Project Agreements, procure and deliver to the GoS an acknowledgment and undertaking, in a form acceptable to the GoS, from the counter party(ies) of each of the Project Agreements, where under such counter party(ies) shall acknowledge and accept the Covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from the GoS in the event of Termination or Suspension.

10.2.5 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire hereby agrees, that the GoS shall have the right to approve and / or disprove the appointment and / or replacement of a Contractor, including but not restricted to the O&M Contractor, if any, in the event any such appointment and / or replacement, in the sole opinion of the GoS, has any implications on national security and / or public interest and the decision of the GoS in this regard shall be final and binding on the Concessionaire. The Concessionaire hereby unconditionally and irrevocably confirms, acknowledges and agrees that the liability of the Concessionaire for the performance of its obligation pursuant to this Agreement shall neither be rescinded, waived, reduced, cancelled, terminated and / or in any manner adversely impacted as a direct and / or indirect consequence of the approval or otherwise of the GoS pursuant to this sub-section 10.2.5 of Section 10.2 (*Obligations with regard to Project Documents*).

Section 10.3 Obligations relating to Change in Ownership

10.3.1 The Concessionaire shall not undertake or permit any Change in Ownership, except with the prior approval of the GoS and subject to the conditions contained herein.

10.3.2 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that:

- (a) all acquisitions of Equity by an acquirer, either by the acquirer or with any person acting in concert, directly or indirectly, including by transfer of the direct or indirect legal or beneficial ownership or control of any Equity, in aggregate of not less than 51% (fifty one per cent) of the total Equity of the Concessionaire; or



- (b) acquisition of any control directly or indirectly of the Board of Directors of the Concessionaire by any person either by himself or together with any person or persons acting in concert with him

shall constitute a Change in Ownership.

10.3.3 The Concessionaire shall not undertake or permit any Change in Ownership a period of two (2) years from the Final Completion Date.

10.3.4 Any Change in Ownership after expiry of the period of two (2) years from the Final Completion Date shall require prior approval of the GoS from national security and public interest perspective and that the decision of the GoS in this regard being final, conclusive and binding on the Concessionaire. The Concessionaire undertakes that it shall not give effect to any such acquisition of Equity or control of the Board of Directors of the Concessionaire without such prior approval of the GoS.

For the purposes of this sub-section 10.3.2 of Section 10.3 (*Obligations relating to Change in Ownership*):

- (a) the term “acquirer”, “control” and “person acting in concert” shall have the same meaning as ascribed thereto in the Listed Companies (Substantial Acquisition of Voting Shares and Takeovers) Ordinance, 2002 or any statutory re-enactment thereof, as in force as on the date of acquisition of Equity, or the control of the Board of Directors, as the case may be, of the Concessionaire;
- (b) the indirect transfer or control of legal or beneficial ownership of Equity shall mean transfer of the direct or indirect beneficial ownership or control of any company or companies whether in Pakistan or abroad which results in the acquirer acquiring control over the shares or voting rights of shares of the Concessionaire; and
- (c) power to appoint, whether by contract or by virtue of control or acquisition of shares of any company holding directly or through one or more companies (whether situated in Pakistan or abroad) the Equity of the Concessionaire, not less than half of the directors on the Board of Directors of the Concessionaire or of any company, directly or indirectly whether situated in Pakistan or abroad, having ultimate control of not less than 51% (fifty one per cent) of the Equity of the Concessionaire shall constitute acquisition of control, directly or indirectly, of the Board of Directors of the Concessionaire.

Section 10.4 Public listing of the Project company

10.4.1 On the best efforts basis, the Concessionaire shall make all necessary plans and arrangements to publicly list the company on the stock market within 3(three) years of Commercial Operations Date so that the shares of the company are available to general public as an investment option and it shall also improve the overall corporate governance frame-work of the company.

Section 10.5 Employment of Foreign Nationals

10.5.1 The Concessionaire acknowledges, agrees and undertakes that employment of foreign personnel by the Concessionaire and/or the



Contractors shall be subject to grant of requisite regulatory permits and approvals including employment/residential visas and work permits, if any required, and the obligation to apply for and obtain the same shall be the sole responsibility of the Concessionaire and, notwithstanding anything to the contrary contained in this Agreement, refusal of or inability to obtain any such permits and approvals by the Concessionaire or the relevant Contractor shall not constitute Force Majeure Event, and shall not in any manner excuse the Concessionaire from the performance and discharge of its obligations and liabilities under this Agreement.

10.5.2 The Concessionaire hereby agrees and undertakes to promote local Contractors and to employ and engage, to the extent practicable local employees and Contractors.

Section 10.6 Employment of Trained Personnel

10.6.1 The Concessionaire shall ensure that the personnel engaged by it in the performance of its obligations under this Agreement are at all times properly trained for their respective functions.

Section 10.7 Project Account

10.7.1 The Concessionaire shall throughout the Concession Period, maintain the Project Account and Escrow arrangement strictly in conformity with the arrangement and structure agreed with the GoS and the Lenders as laid down in Schedule Y (*Project Account and Project Proceeds Routing Details*).

10.7.2 During the term of the Financing, the Concessionaire may create an Encumbrance over the Project Account as security for pre-payment and payment obligation to the Lenders.

Section 10.8 Legal Consultancy Fee and Project Development Fund

10.8.1 The Concessionaire hereby unconditionally and irrevocably undertakes to reimburse to the GOS PKR 10 million on which the first charge will be that of the Legal Consultant hired for the GOS in relation to this project and the second charge would be that of the Project Development Fund, which is a revolving fund created by the GOS in the Finance Department to facilitate the hiring of consultants for feasibility studies and advisory. The said reimbursement shall be effected by the Concessionaire within seven (7) days upon receipt of a notice in respect of the same from the GOS.

ARTICLE 11 PERFORMANCE SECURITY

Section 11.1 Performance Security

11.1.1 In consideration of the Concession and for the due and punctual performance of its obligations during the Construction Period the



Concessionaire shall deliver the Performance Security for Construction to the GoS before the expiry of the bid security that had been delivered during the bidding process for the Project.

- 11.1.2 In consideration of the Concession and for the due and punctual performance of its obligations during the Operation Period the Concessionaire shall deliver the Performance Security for O&M to the GoS within a period of thirty (30) days from the Final Project Completion Date; provided however, in the event the Performance Security for O&M is not received by the GoS within the said period thirty (30) days from the Final Project Completion Date, than the GoS may, at its discretion encash the Performance Security for Construction and appropriate the proceeds thereof as Damages and thereupon all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by the Concessionaire, and to have ceased with the concurrence of the Concessionaire, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.
- 11.1.3 The Performance Security for Construction furnished under this provision shall be valid until expiry of the Defects Liability Period. Failure of the Concessionaire to provide a valid Performance Security for Construction during the Defects Liability Period shall entitle the GoS to forthwith terminate this Agreement in accordance with Article 23 (*Termination for Concessionaire Event of Default*)
- 11.1.4 Notwithstanding anything contained herein, at all times during the Concession Period the Performance Security shall continue to be effective and binding, either in the form of the Performance Security for Construction or the Performance Security for O&M.

Section 11.2 Appropriation of Performance Security

- 11.2.1 Upon occurrence of a Concessionaire Default the GoS shall, without prejudice to its other rights and remedies hereunder or in Law, be entitled to encash and appropriate the relevant Performance Security as Damages for such Concessionaire Default.
- 11.2.2 Upon such encashment and appropriation of the Performance Security or any partial encashment and appropriation of the Performance Security, the Concessionaire shall, within fifteen (15) days thereof, replenish the Performance Security; provided however, in the event the Performance Security has been encashed in its entirety than the Concessionaire shall provide fresh Performance Security.
- 11.2.3 The failure of the Concessionaire to fulfill its obligations in accordance with sub-section 11.2.2 of Section 11.2 (*Appropriation of Performance Security*) shall entitle the GoS to terminate this Agreement in accordance with Article 21 (*Force Majeure*).

Section 11.3 Release of Performance Security



- 11.3.1 The Performance Security for Construction shall remain in force and effect for a period of twenty-four (24) months from the Commencement Date and shall be released by the GoS to the Concessionaire within seven (7) days from the date of receipt of the Performance Security for O&M, unless encashed earlier in accordance with the provisions of this Agreement.
- 11.3.2 The Performance Security for O&M shall remain in force and effect for a period of twenty-five (25) years from the Commencement Date and shall be released by the GoS on the Termination Date, unless encashed earlier in accordance with the provisions of this Agreement.

ARTICLE 12 DRAWINGS

Section 12.1 Preparation of Drawings

- 12.1.1 The Concessionaire may, subject to the Design Requirements, adopt with or without modifications the Drawings made available by the GoS or adopt its own Drawings. Provided however, that the Concessionaire shall be solely responsible for the adequacy and accuracy of the Drawings and shall not hold the GoS and / or its advisors responsible for the adequacy and / or the accuracy of the drawings provided by GoS.
- 12.1.2 Notwithstanding the Concessionaire's decision to adopt the Drawings as provided by GoS, irrespective of whether such Drawings are adopted with or without modifications, or the adoption by the Concessionaire of its own Drawings, the Concessionaire hereby confirms and agrees that all Drawings shall remain subject to the review and acceptance by the Independent Engineer prior to the adoption of the same by the Concessionaire.



Section 12.2 Details of Drawings

12.2.1 The Drawings to be submitted by the Concessionaire to the Independent Engineers shall include the following details:

- (a) [alignment of the Bridge and the relevant connecting Roads and the Project Facility];
- (b) finished Road level; and
- (c) general arrangement drawings of major bridges, flyovers and grade separators; and
- (d) such further information and details as and / or may be requested by the Independent Engineer and GoS.

12.2.2 All Drawings submitted by the Concessionaire shall comply with and be in accordance with the Design Requirements.

Section 12.3 Review of Drawings

12.3.1 The Concessionaire shall promptly and in such sequence as is consistent with the Construction Requirements, submit four (4) copies of the Drawings to the Independent Engineer and the GoS.

12.3.2 The submission of the Drawings by the Concessionaire to the Independent Engineer and the GoS pursuant to the provisions of sub-section 12.3.1 of this Section 12.2 (*Review of Drawings*) shall constitute the representation of the Concessionaire that the Concessionaire has verified and determined that the Drawings submitted by the Concessionaire are in conformity with the Design Requirements.

12.3.3 Within 15 days of receipt of the Drawings, the Independent Engineer shall review and comments on the same taking into account, inter alia, the comments of GoS, if any, thereon, and convey its comments/observations to the Concessionaire on the conformity of the Drawings with Design Requirements.

12.3.4 The Concessionaire hereby undertakes to revise the Drawings to the extent necessary and to resubmit the same for the review of the Independent Engineer, in the event the comments and the observations of the Independent Engineers indicate that the Drawings initially submitted by the Concessionaire for review by the Independent Engineer pursuant to the provisions of sub-section 12.3.1 of this Section 12.2 (*Review of Drawings*), are not in conformity with the Design Requirements. The Independent Engineer shall provide its observations and comments on such re-submitted Drawings, if any, within 15 (fifteen) days of receipt of such revised Drawings.



- 12.3.5 The Concessionaire shall simultaneously with the submission of Drawings to the Independent Engineer prepare and submit to the Independent Engineer the construction plan providing, inter - alia, the Critical Path Method in respect of the Project.
- 12.3.6 Notwithstanding anything contained herein:
- 12.3.7 in the event, the response of the Independent Engineer is not provided within the period stipulated in sub-section 12.3.3 and / or 12.3.4 of this Section 12.2 (*Review of Drawings*), than the Concessionaire may, at its discretion and its sole risk, as to costs and liability, proceeds with the Construction Works, on the basis of the Drawings submitted by the Concessionaire to the Independent Engineer;
- 12.3.8 the Concessionaire shall be solely liable for the Drawings and their compliance and conformity with the Design Requirements, and shall not be relieved and / or absolved in any manner whatsoever of its obligations hereunder, irrespective of whether or not the Independent Engineer has provided its observations and comments in accordance with this Section 12.2 (*Review of Drawings*);
- 12.3.9 the Concessionaire shall continue to be liable for the Concessionaire's obligations and liabilities set out in this Agreement and shall neither be relieved of the same nor shall the same be transferred to any other person, including but not restricted to the Independent Engineer and / or the GoS, as a consequence of the requirement for the Independent Engineer to provide its observations and comments pursuant to sub-section 12.3.3 and / or 12.3.4 of this Section 12.2 (*Review of Drawings*). Neither the review of the Drawings by the Independent Engineer, the failure of the Independent Engineer to provide its observations and comments nor the provision of the observations and comments by the Independent Engineer and / or GoS on the Drawings shall relieve the Concessionaire of its obligations and liabilities hereunder, nor shall the same be construed as a waiver of the Concessionaire's obligations contained herein; nor shall the Independent Engineer and / or the GoS be held liable for the observations and comments provided by the Independent Engineer on the Drawings.
- 12.3.10 The Concessionaire hereby represents and warrants that the Concessionaire is solely responsible and liable for (a) achieving / completion of the Project Milestones; and (b) achieving Project Completion by the Final Completion Date and the said obligation and liability of the Concessionaire shall not be reduced, negated, rescinded and / or waived by any delay and / or failure of the Independent Engineer to fulfill its obligations as set out in this Section 12.2 (*Review of Drawings*).

Section 12.4 Submission of Drawings Post Commercial Operations Date

- 12.4.1 Within forty-five (45) days of Commercial Operations Date, the Concessionaire shall submit to the GoS, in respect of each Project in



relation to which the Project Milestones has occurred, the "as built" Drawings, duly verified by the Independent Engineer, including "as built" survey, illustrating the layout of the Bridge and the Project Facilities and setback lines, if any, of the buildings and structures forming part of Bridge and the Project Facilities and reflecting the same as actually designed, engineered and constructed.

- 12.4.2 The "as built" Drawings to be submitted by the Concessionaire pursuant to this Section 12.4 (*Submission of Drawings Post Commercial Operations Date*) shall be in such form as may be requested by the GoS, including but not restricted to paper format (hard copies), digital format, micro films or such other format as may be acceptable to GoS.

ARTICLE 13 PROJECT CONSTRUCTION

Section 13.1 Commencement of Construction Works

- 13.1.1 The Concessionaire is required to commence Construction Works only on or after the Commencement Date or the Financial Close whichever is later.
- 13.1.2 The Concessionaire shall immediately upon commencement of the Construction Works notify the GoS of the same.
- 13.1.3 The Concessionaire shall only be required to commence Construction Works after satisfaction of the Conditions Precedent.
- 13.1.4 The Concessionaire shall adhere to the Construction Requirements and achieve Final Project Completion on or before the Scheduled Project Completion Date.
- 13.1.5 The Concessionaire may undertake Construction Works by itself or through a Contractor possessing requisite technical, financial and managerial expertise/capability; provided however, the Concessionaire shall remain solely liable for compliance with the Construction Requirements irrespective of whether the Construction Works are undertaken by the EPC Contractor or by the Concessionaire. Provided however that the Concessionaire shall ensure that the EPC Contractor does not sub-contract more than 50 percent.
- 13.1.6 The Independent Engineer, may, by written notice, require the Concessionaire to suspend forthwith the whole or any part of the Construction Works which in the reasonable opinion of the Independent Engineer is being carried on / conducted in a manner that is not in conformity with the Construction Requirements and / or is not in accordance with Good Industry Practice.

Section 13.2 Obligations of the Concessionaire

- 13.2.1 Prior to the commencement of the Construction Works, the Concessionaire shall:



- (a) have requisite organization and designate and appoint suitable officers/ representatives as it may deem appropriate to supervise the Project, to deal with the Independent Engineer/the GoS and to be responsible for all necessary exchange of information required pursuant to this Agreement;
- (b) construct, provide and maintain a reasonably furnished site office accommodation for the Independent Engineer, at the Project Site;
- (c) submit to the GoS and the Independent Engineer its detailed design, construction methodology, quality assurance procedures, and the engineering, procurement, and construction time schedule for completion of the Project in accordance with the Project Completion Schedule;
- (d) appoint its representative duly authorised to deal with the GoS in respect of all matters under or arising out of or relating to this Agreement (**“Authorized Representative”**);
- (e) undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of construction under and in accordance with this Agreement, the Applicable Laws and Applicable Permits; and
- (f) appoint at its sole cost and expense one or more established consulting engineering firm to design and supervise the Construction Works and in particular to ensure that the Construction Works is in accordance with the Construction Requirements, Specifications and Standards and Good Industry Practice (**“Project Engineer”**).

13.2.2 The Concessionaire covenants that during the terms of the Concession Period, the Concessionaire shall, at its own cost and expense:

13.2.3 the Concessionaire shall fulfill its obligations in accordance with the terms of this Agreement, Good Industry Practice and the Project Requirements;

13.2.4 obtain and maintain all Concession Permits and registrations required by the laws of Pakistan to enable it to undertake its obligations in conformity with the Applicable Laws and be in compliance thereof at all times during the term of this Agreement;

13.2.5 procure and maintain in full force and effect, as necessary, appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used in or incorporated into the Project;

13.2.6 provide all necessary assistance to the Project Manager, as the Project Manager may reasonably require for the performance of its duties and services;

13.2.7 appoint, supervise, monitor and control as necessary, the activities of Contractors under the respective contracts;

13.2.8 use reasonable endeavors to maintain harmony and good industrial relations among the personnel employed in connection with the



performance of its obligations under this Agreement and to provide the Project Works;

- 13.2.9 make its own arrangements for construction materials and observe and fulfill the environmental and other requirements under the Applicable Laws and Applicable Permits;
- 13.2.10 be responsible for quality, soundness, durability, safety and the overall Project Requirements, notwithstanding the appointment of the Contractors, if any, to implement the Project and undertake the Project Works;
- 13.2.11 ensure that the EPC Contractor does not sub-contract Construction Works except in accordance with Clause 13.5.1 of the Agreement;
- 13.2.12 afford access to the Project Site to the recognized representatives of GoS, the Project Manager and any Government Agency having jurisdiction over the Project, including those concerned with safety, security or environmental protection to inspect the Project and to investigate any matter within their authority and upon reasonable notice, the Concessionaire shall provide to such persons assistance reasonably required to carry out their respective duties and functions; and
- 13.2.13 maintain its corporate existence and its rights to carry on operations of its business.

Section 13.3 Tests

- 13.3.1 The Concessionaire shall conduct or procure to be conducted such tests, as may be required and / or requested by the Independent Engineer, in order to determine whether the Construction Works conform to the Project Requirements ("**Tests**"). The Tests shall be conducted at such time and frequency and in such manner as may be specified by the Independent Engineer and in accordance with Good Industry Practice.
- 13.3.2 The Concessionaire hereby undertakes to conduct the Tests under the supervision of the Independent Engineer and in accordance with the Construction Requirements at its own cost and expense.
- 13.3.3 The Concessionaire hereby undertakes to carry out, at its sole cost, the necessary remedial measures required to rectify the defects and deficiencies identified in the Tests and to ensure that as a consequence of such remedial measures the Construction Works conform to the Project Requirements. The Concessionaire further undertakes that the remedial measures required to be undertaken by the Concessionaire pursuant to this sub-section 13.3.3 of Section 13.3 (*Tests*) shall be repeated by the Concessionaire at its sole cost till such time as the Construction Works conform to the Project Requirements.



- 13.3.4 The Concessionaire shall maintain proper record of the Tests and the remedial measures taken to cure the defects or deficiencies, if any, indicated by the Test results.

Section 13.4 Monthly Progress Reports

- 13.4.1 During the Construction Period, the Concessionaire shall, no later than 3 days after the close of each month, furnish to the Independent Engineer, the Project Manager and the Secretary, Works and Services Department, Government of Sindh, monthly reports on the progress of the Construction Works and shall promptly give such other relevant information as may be required by the Independent Engineer.

Section 13.5 Inspection Report

- 13.5.1 During the Construction Period, the Independent Engineer shall at least once a month prepare an report on the Project stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Scope of the Project ("**Inspection Report**").
- 13.5.2 The Independent Engineer shall within 7 days provide a copy of the Inspection Report to the Concessionaire and the GoS.
- 13.5.3 The Concessionaire hereby undertakes that within 15 days from receipt of the Inspection Report, the Concessionaire shall rectify and remedy the defects or deficiencies, if any, stated in the Inspection Report, on its own cost and expenses.
- 13.5.4 The inspection or submission of the Inspection Report by the Independent Engineer shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever.

Section 13.6 Delays During Construction

- 13.6.1 In the event the Concessionaire fails to achieve any of the Project Milestones or the Independent Engineer shall have reasonably determined that the rate of progress of Construction Works is such that the Project cannot achieve Project Completion on or before the Scheduled Final Project Completion Date than the Independent Engineer shall issue a notice to the Concessionaire to this effect and the Concessionaire shall, within 7 days of such notice inform the Independent Engineer in reasonable detail about the steps the Concessionaire proposes to undertake to expedite progress and the period within which it shall achieve the Scheduled Final Project Completion Date.

Section 13.7 Suspension of Unsafe Construction Works

- 13.7.1 Upon recommendation of the Independent Engineer to this effect, the GoS may by notice require the Concessionaire to suspend forthwith the whole or any part of the Construction Works if, in the reasonable



opinion of the GoS, such work threatens the safety of the Users and pedestrians ("**Suspension**").

- 13.7.2 The Concessionaire shall, pursuant to the notice under sub-section 13.7.1 of this Section 13.7 (*Suspension of Unsafe Construction Works*), suspend the Construction Works or any part thereof for such time and in such manner as may be specified by the GoS and thereupon carry out remedial measures to secure the safety of suspended works and the Users.
- 13.7.3 The Concessionaire may by notice require the Independent Engineer to inspect such remedial measures forthwith and make a report to the GoS recommending whether or not the Suspension may be revoked. Upon receiving the recommendations of the Independent Engineer, the GoS shall either revoke such Suspension or instruct the Concessionaire to carry out such other and further remedial measures as may be necessary in the reasonable opinion of the GoS, and the procedure set forth in this Section 13.7 (*Suspension of Unsafe Construction Works*) shall be repeated till such time as the Suspension hereunder is revoked.
- 13.7.4 Subject to the provisions of Section 21.4 (*Allocation of Costs Arising Out of Force Majeure*), all reasonable costs incurred for maintaining and protecting the Construction Works or part thereof during the period of Suspension (the "**Preservation Costs**"), shall be borne by the Concessionaire; provided that if the Suspension has occurred as a result of any breach of this Agreement by the GoS, the Preservation Costs shall be borne by the GoS.
- 13.7.5 If Suspension is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine any extension of the dates set forth in the Project Completion Schedule to which the Concessionaire is reasonably entitled, and shall notify the GoS accordingly whereupon the GoS shall extend such Project Completion Schedule dates in accordance with the recommendations of the Independent Engineer and the Independent Auditor.

Section 13.8 Project Implementation Unit

- 13.8.1 The Projection Implementation Unit shall oversee the day to day implementation of the Project and facilitate implementation of the Project as detailed in Schedule S.

Section 13.9 Escalation

- 13.9.1 It is hereby agreed between the parties that the Total Project Cost is inclusive of price escalation of ten percent (10%) on all Escalable Items.
- 13.9.2 In the event at any time, the Base Price of the Escalable Items or any one of the Escalable Items exceeds the ten percent (10%) ("**Escalable Price**"), the GOS will bear fifty percent (50%) of the difference between the Base Price and Escalable Price only upon the Independent Engineer



and Independent Auditor duly verifying such escalation over the Base Price of the Escalable Items.

ARTICLE 14 COMPLETION

Section 14.1 Completion Tests

- 14.1.1 At least 30 days prior to the expected Commercial Operations Date, the Concessionaire shall suggest a date and time to the Independent Engineer for conducting the Completion Tests.
- 14.1.2 The date and time of the Completion Tests, shall be finalized by the Independent Engineer in consultation with the Concessionaire, and notified to the GoS; provided however in the event the date and time for the Completion Tests notified by the Concessionaire is not acceptable to the Independent Engineer than the Independent Engineer shall suggest alternate dates occurring within a period of no later than fifteen (15) days from the date suggested by the Concessionaire, subject to such alternate date being a date occurring prior to the Commercial Operations Date. Provided further, that if the Concessionaire and the Independent Engineer are unable to agree on the alternate dates than the Completion Tests shall be conducted within a period of 7 days from the date suggested by the Independent Engineer. Notwithstanding anything contained herein, the Concessionaire and the Independent Engineer shall endeavor to conduct the Completion Tests, once requested by the Concessionaire, prior to the Commercial Operations Date. The GoS shall ensure that the provision with regard to the conducting of Completion Tests, contained in this sub-section 14.1.2 of Section 14.1 (*Completion Tests*) is adequately reflected in the Independent Engineer Contract.
- 14.1.3 The Tests shall be attended by the Project Manager and / or such other representatives of the GoS as the GoS may nominate in writing, subject to notification of the same to the Concessionaire and the Independent Engineer.
- 14.1.4 The Concessionaire shall provide such assistance as the Independent Engineer may reasonably require for conducting the Completion Tests. In the event of the Concessionaire and the Independent Engineer failing to mutually agree on the dates for conducting the Completion Tests, the Concessionaire shall fix the dates by not less than 3 days' notice to the Independent Engineer.
- 14.1.5 All Tests shall be conducted in accordance with **Schedule U**. Provided, however; the Independent Engineer may require the Concessionaire to carry out or cause to be carried out additional Tests, in accordance with Good Industry Practice, for determining the compliance of the Project with Project Requirements.

Section 14.2 Rescheduling of Completion Tests



- 14.2.1 In the event the Independent Engineer certifies to the GoS and the Concessionaire that it is unable to issue the Substantial Completion Certificate and / or the Final Completion Certificate, as the case may be, due to events or circumstances on account of which the Tests could not be held or had to be suspended than the Concessionaire shall be entitled to seek rescheduling of the Tests and conduct the same as soon as reasonably practicable.

Section 14.3 Substantial Completion Certificate

- 14.3.1 The Completion Tests in respect of the Project shall be conducted in accordance with the provisions of Section 14.1 (*Completion Tests*).
- 14.3.2 The Independent Engineer may, at the request of the Concessionaire, issue a Substantial Completion Certificate of completion substantially if the Tests are successful and the Project Assets/Facility can be safely and reliably placed in commercial operation though certain works or things forming part thereof are outstanding and not yet complete. In such an event, the Substantial Completion Certificate shall have appended thereto a list of outstanding items signed jointly by the Independent Engineer and the Concessionaire (the "Project Completion Check List"); provided that the Independent Engineer shall not withhold the Substantial Completion Certificate for reason of any work remaining incomplete if the delay in completion thereof is attributable to the GoS.
- 14.3.3 The Parties hereto expressly agree that a Substantial Completion Certificate under this Section may, upon request of the Concessionaire to this effect, be issued for operating part of the Project Highway, if at least 75% (seventy five per cent) of the total length of the Project Highway has been completed and if the movement & safety of the users is not affected. Upon issue of such Substantial Completion Certificate, the provisions of Article – Entry into Commercial Service shall apply to such completed part.
- 14.3.4 Substantial Completion Certificate issued by the Independent Engineer shall have attached thereto a list of the outstanding works, actions and things required to be completed by the Concessionaire ("**Project Completion Check List**").

Section 14.4 Project Completion Check List

- 14.4.1 Notwithstanding that the Substantial Completion Certificate shall be signed solely by the Independent Engineer, the Project Completion Check List shall be jointly signed by the Independent Engineer and the Concessionaire as a confirmation of the outstanding works, actions and things required to be completed by the Concessionaire in line with the Project ("**Project Completion Check List Items**").
- 14.4.2 The Concessionaire undertakes to complete all Project Completion Check List Items within the time period determined by the Independent Engineer; provided however the Project Completion Check List Items



shall be completed within a period not exceeding [ninety (90) days] from the date of issue of Substantial Completion Certificate.

- 14.4.3 The Concessionaire shall be liable for payment of Construction Period Damages to the GoS in the event the Concessionaire fails to complete the Project Completion Check List Items within the said period of ninety (90) days from the date of issue of the Substantial Completion Certificate, solely due to the Concessionaire's failure to comply with its obligations in terms of this Agreement and not as a consequence of Force Majeure and / or as a consequence of the GoS' failure to fulfill its obligations hereunder. Provided however; in the event the Concessionaire fails to successfully complete the Project Completion Check List Items within a period of [one hundred and twenty (120) days] from the date of issuance of the Substantial Completion Certificate than such failure of the Concessionaire shall constitute a termination event, and the GoS may at its sole discretion termination this Agreement in accordance with the Article 23 (*Termination*).

Section 14.5 Construction Period Damages

- 14.5.1 In the event the Concessionaire is unable to complete the Project Completion Check List Items within the period of ninety (90) days from the date of issue of the Substantial Completion Certificate, it shall pay to the GoS damages in a sum calculated at the rate of zero point two per cent (0.2%) of the amount of Performance Security for Construction for the delay of each day till such time as the Project Completion Check List Items are completed and the Substantial Completion Certificate ("**Construction Period Damages**") is issued unless such delay is due to the Permitted Events. Notwithstanding anything contained herein, the recovery of Construction Period Damages under this Section shall be without prejudice to the rights of the GoS under this Agreement, including the right of Termination.

Section 14.6 Final Project Completion Certificate

- 14.6.1 Within 90 days from the date of issuance of the Substantial Completion Certificate, the Independent Engineer shall issue a certificate certifying that the Project has achieved Project Completion ("**Final Project Completion Certificate**"); provided however the Final Project Completion Certificate may be issued only upon the confirmation that the Completion tests were successful and the Project Completion Check List items have been addressed appropriately.

ARTICLE 15 COMMERCIAL OPERATIONS

Section 15.1 Project Completion Date

- 15.1.1 The Project shall be deemed to achieve project completion on the date of issuance of the Final Completion Certificate ("**Project Completion Date**"). Provided however, in case the Project Completion Date is delayed beyond one hundred and twenty (120) days from the Scheduled Project Completion Date and such delay is not directly



attributable to the Permitted Events, than the GoS shall subject to the provisions of Concessionaire Events of Default be entitled to terminate this Agreement and appropriate the Performance Security.

Section 15.2 Scheduled Project Completion Date

15.2.1 The Concessionaire hereby guarantees that the Project Completion Date shall be achieved in accordance with the provisions of this Agreement and that the Project Completion Date shall occur on or before 30th June, 2014 ("**Scheduled Project Completion Date**").

ARTICLE 16 CHANGE OF SCOPE

Section 16.1 Change of Scope

16.1.1 The Parties agree that notwithstanding anything to the contrary contained in this Agreement, the GoS may require a change / amendment in the Scope of the Project ("**Change of Scope**"), provided that such change does not result in an increase in the Total Project Cost by more than fifteen percent (15%).

16.1.2 In the event the GoS requires a change / amendment in the Scope of the Project which results in an increase in the Total Project Cost by more than fifteen percent (15%), the GoS will give the Concessionaire an opportunity to submit a proposal in respect of such change/amendment in Scope of Project.

16.1.3 In the event the proposal submitted by the Concessionaire in accordance with Section 16.1.2 is not acceptable to GoS, the GoS shall reserve the right to re-tender any change / amendment in the Scope of the Project which results in an increase in the Total Project Cost by more than fifteen percent (15%) and the Concessionaire hereby waives the right to contest such re-tendering.

Section 16.2 Change of Scope Notice

16.2.1 The GoS may request for the Change of Scope by issuing a Change of Scope Notice in accordance with the provisions of this Section 16.2 (*Change of Scope Notice*).

16.2.2 The GoS may request for a Change of Scope by issuing a notice in writing to the Concessionaire through the Independent Engineer ("**Change of Scope Notice**):

(a) at least ninety (90) days prior to the Final Completion Date in the event the Change of Scope is required in respect of the Construction Period; and

16.2.3 In the event at any time during the Construction Period and / or the Operation Period, the Concessionaire determines that a Change of Scope is necessary for providing safer and improved services to the Users, the Concessionaire shall issue a request in writing to the GoS



through the Independent Engineer to consider issuing a Change of Scope Notice in respect of the same. The GoS shall within forty-five (45) days from the date of receipt of such notice, either accept such request for Change of Scope, on an "as is" basis or with modifications, and issue the requisite Change of Scope Notice in accordance with the provisions of this Section 16.2 (*Change of Scope Notice*) or communicate its reasons for not accepting the same to the Concessionaire.

Section 16.3 Change of Scope Order

16.3.1 The Concessionaire shall, within 15 days of receipt of the Change of Scope Notice, provide to the Independent Engineer such information as is necessary and reasonable together with the preliminary documentation and details, including the calculations, where necessary, in support of the following:

- (a) the impact which the Change of Scope is likely to have on the Construction Requirements in the event the Change of Scope is in respect of the Construction Period and / or the O&M Requirements in the event the Change of Scope is in respect of the Operation Period;
- (b) the budgeted estimate of the Additional Cost to be incurred by the Concessionaire for implementing the Change of Scope;
- (c) the estimated additional time (number of days) that the Concessionaire would require to achieve Commercial Operation Dates consequent to the Change of Scope and any delay, if any, in the Final Expiry Date.

16.3.2 The Independent Engineer shall after reviewing the information, documentation and the budgeted estimate of the Additional Cost submitted by the Concessionaire sub-section Section 16.3 (b) of this Section 16.2 (*Change of Scope Order*), settle the rates approve the designs and forward the budgeted estimates of the Additional Cost, as duly certified by the [Independent Engineer / Independent Auditor] in consultation with the Concessionaire, to the GoS.

16.3.3 The GoS may, within a period of fifteen (15) days from the date of receipt of such statement, issue an order in writing to the Concessionaire, through the Independent Engineer instructing the Concessionaire to affect the Change of Scope ("**Change of Scope Order**"). Provided however; the final Additional Cost shall be computed by taking into account the actual work executed by the Concessionaire as measured and certified by the Independent Engineer, at the rates agreed.

16.3.4 In the event, the GoS for any reason whatsoever decides not to issue a Change of Scope Order than the GoS shall reimburse the Concessionaire for the cost/expenses actually incurred by the Concessionaire in the preparation and submission of the drawings, documents, estimates and other information in compliance with the Change of Scope Notice; provided such costs and expenses are duly certified by the Independent Auditor and the Independent Engineer.



16.3.5 Within fifteen (15) days from the issuance of the Change of Scope Order, the GoS shall notify the Concessionaire of the mode for reimbursement of the Additional Cost which shall be either of the following:

- (a) by lump-sum reimbursement to the Concessionaire of the Additional Cost; or
- (b) reimbursement of the Additional Cost to the Concessionaire, in two (2) equal half yearly installments;
- (c) payment of the Additional Cost, in equal installments along with the Annuity Amount Payments on each Annuity Amount Payment Date.

16.3.6 The Change of Scope Order shall be effective from the date that the GoS notifies the mode of reimbursement of the Additional Cost to the Concessionaire pursuant to sub-section 16.3.5 of this Section 16.3 (*Change of Scope Order*).

16.3.7 The GoS shall be liable to pay the Additional Cost in accordance with sub-section 16.3.5 of this Section 16.3 (*Change of Scope Order*), only upon receiving a certificate from the Independent Engineer confirming that the Concessionaire has completed the works in accordance with the Change of Scope Order.

ARTICLE 17 ANNUITY AMOUNT PAYMENTS

Section 17.1 Annuity Amount Payments

17.1.1 Subject to the provisions of this Agreement, and in consideration of the Concession and the undertaking by the Concessionaire to perform and discharge its obligations in accordance with the terms and conditions set out in this Agreement, the GoS agrees to pay the Annuity Amount Payments to the Concessionaire in accordance with the terms of this Agreement.

Section 17.2 Payment of Annuity Amount Payments

17.2.1 The GoS shall pay the Annuity Amount Payments to the Concessionaire during the Annuity Amount Payment Period on each Annuity Amount Payment Date strictly in accordance with the terms of this Article 17 (*Annuity Amount Payments*).

Section 17.3 Assured Annuity Amount and Non-Performance

17.3.1 In the event during any Annuity Amount Payment Period, the performance and service quality of the Bridge and the Project Facility is less than the Assured Annuity Amount as a consequence of the failure of the Concessionaire to perform its obligations as contained herein than the right of the Concessionaire to receive the Annuity Amount Payments shall stand proportionately reduced; except when such Non



Performance arises as a consequence of the Permitted Events and / or the GoS Events of Default.

17.3.2 Notwithstanding anything contained herein, the Bridge, the relevant connecting Roads and the Project Facility shall be deemed to be unavailable, in the event, at any time during any Annuity Amount Payment Period:

- (a) the Bridge, the relevant connecting Roads or any part thereof is closed to the traffic otherwise than in accordance with the O&M Requirements;
- (b) the Independent Engineer determines that:
- (c) the riding quality of the Bridge and the relevant connecting Roads has deteriorated to a level which is below the acceptable levels prescribed by the O&M Requirements; and
- (d) the Bridge and/or the relevant connecting Roads is not safe for operation, in the opinion of the Independent Engineer;

irrespective of whether the Bridge and the relevant connecting Roads has been closed to traffic or not.

Provided however, in the event the occurrence of the above or any combination of the above events results in 10% of the Bridge and the relevant connecting Roads being unavailable for a consecutive period of thirty (30) days during any Annuity Amount Payment Period than the same shall constitute an Event of Default and shall not constitute Non Performance.

Section 17.4 Adjustment of Annuity Amount Payments

17.4.1 Notwithstanding anything contained herein, the Annuity Amount Payments payable by the GoS to the Concessionaire during any Annuity Amount Payment Period shall be subject to adjustment in accordance with the Annuity Amount Payment Adjustment Formula, upon the occurrence of any of the events set out in this Section 17.4 (*Adjustment of Availability Payments*) ("**Annuity Amount Payment Adjustment Events**").

17.4.2 The following events shall constitute the Annuity Amount Payment Adjustment Events:

- (a) the Independent Engineer has certified the Non Performance or Non Performance has otherwise been established;
- (b) the Bridge, the relevant connecting Roads and the Project Facility or any part thereof is closed to the traffic otherwise than in accordance with the O&M Requirements;
- (c) the Independent Engineer determines that:



- (d) the riding quality of the Bridge, the relevant connecting Roads and the Project Facility has deteriorated to a level which is below the acceptable levels prescribed by the O&M Requirements; and
- (e) the Bridge and the relevant connecting Roads are not safe for operation, in the opinion of the Independent Engineer;

irrespective of whether the Bridge and the relevant connecting Roads has been closed to traffic or not;

OR

as a consequence of the Concessionaire's failure the quality of the Bridge and the relevant connecting Roads deteriorates below the levels prescribed by the O&M Requirements;

17.4.3 In the final three (3) years of the Annuity Amount Payment Period, the GoS may reduce the payments that are otherwise due to the Concessionaire to the extent that the end-of-term requirements related to the condition of the structures are not met.

ARTICLE 18 SAFETY REQUIREMENTS

Section 18.1 Safety Requirements

18.1.1 The Concessionaire hereby unconditionally and irrevocably undertakes to comply with the Applicable Laws, Applicable Permits, and the Project Requirements and to conform to Good Industry Practice and the terms of this Agreement for securing the safety of the Users. In particular, the Concessionaire shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Project, and shall comply with the safety requirements as prescribed by the Independent Engineer.

ARTICLE 19 OPERATION AND MAINTENANCE

Section 19.1 Operation and Maintenance

19.1.1 The Concessionaire shall undertake the Operation and Maintenance of the Project and the Project Facility in accordance with the O&M Requirements either itself, or through the O&M Contractor; provided however, the Concessionaire shall remain solely liable for compliance with the O&M Requirements irrespective of whether the Operation and Maintenance is undertaken by the Concessionaire or the O&M Contractor.

19.1.2 The payments for O&M shall only be made on the basis of actual cost incurred by the Concessionaire as certified by both the Independent Engineer and the Independent Auditor. Moreover, the O&M costs shall not exceed in any case 1% of the project costs indexed for inflation.

19.1.3 The Project should not require a major maintenance before ten years of commercial operations date and then again not require major



maintenance before ten years of first major maintenance. Bidders should build the major maintenance expense into their annuity payment for that year; however, the payment for the major maintenance shall be made at the time of actual expense only after certification by the Independent Engineer and the Independent Auditor.

Section 19.2 Operation and Maintenance Obligations of the Concessionaire

19.2.1 The Concessionaire undertakes to perform the Operation and Maintenance of the Project and the Project Facility during the Operation Phase in accordance with the provisions of Section 19.1 (*Operation and Maintenance*) and to modify, repair and to provide all such improvements and services as may be required for the Operation and Maintenance of the Project and Project Facilities in accordance with the Operation and Maintenance Requirements.

19.2.2 The Concessionaire hereby agrees that the Operation and Maintenance obligations of the Concessionaire hereunder shall include, without restriction, the following:

- (a) ensuring that during the Operation Period, the Bridge, the relevant connecting Roads and each relevant Project Asset is in a condition to permit safe, smooth and uninterrupted flow of traffic during normal operating conditions;
- (b) minimizing disruption to traffic in the event of accidents or other incidents affecting the safety and use of the Bridge/the relevant connecting roads and by providing a rapid and effective response and maintaining liaison with emergency services of the GoS;
- (c) carrying out periodic preventive maintenance of the Bridge, the relevant Project Asset and the Project Facilities;
- (d) undertaking routine maintenance including prompt repairs of potholes, cracks, joints, drains, embankments, structures, pavement markings, lighting, road signs and other traffic control devices;
- (e) preventing, with the assistance of concerned law enforcement agencies, any unauthorized use of the Bridge, the relevant connecting roads and the Project Facilities;
- (f) preventing, with the assistance of the concerned law enforcement agencies, any encroachments on the Project Site;
- (g) protection of the environment and provision of equipment and materials therefor;
- (h) operation and maintenance of all communication, control and administrative systems necessary for the efficient operation of the Bridge, the relevant connecting roads and the Project Facilities;
- (i) maintaining a public relations unit to interface with and attend to suggestions from the Users, the GoS, the government agencies, media and other agencies; and



(j) complying with Safety Requirements.

19.2.3 The Concessionaire shall promptly remove from the Project Site, all surplus construction machinery and materials, waste materials (including hazardous materials and waste water), rubbish and other debris (including, without limitation, accident debris) and keep the Project Site, as the case may be, in a clean, tidy and orderly condition, and in conformity with the O&M Requirements and Good Industry Practice.

19.2.4 The Concessionaire shall maintain, in conformity with Good Industry Practice, all stretches of approach roads, over-passes, under-passes or other structures situated on the Project Site, but not forming part of the Bridge.

Section 19.3 Reimbursement by Concessionaire

19.3.1 In the event the Concessionaire has failed to operate and maintain the Project and the Project Facility in accordance with O&M Requirements and such failure has not been remedied despite a notice to that effect issued by the Independent Engineer or the GoS ("**Notice to Remedy**"), then the GoS may, without prejudice to any of its other rights and remedies under this Agreement shall be entitled to cause the repair and maintenance of the Project and the Project Facility at the risk and cost of the Concessionaire. The Concessionaire shall reimburse all costs incurred by the GoS on account of such repair and maintenance within fifteen (15) days of receipt of the GoS' claim thereof.

Section 19.4 Material Breach of O&M Requirements

19.4.1 The Concessionaire shall be deemed to be in material breach of the O&M Requirements ("**Material Breach of O&M Requirements**") if the Independent Engineer acting reasonably and in accordance with the provisions of this Agreement, has determined that due to breach of its obligations by the Concessionaire:

- (a) there has been failure/undue delay in carrying out scheduled/planned maintenance or the scheduled/planned maintenance has not been carried out in accordance with the O&M Requirements;
- (b) the riding quality of the Bridge or any part thereof has deteriorated to a level which is below the acceptance level prescribed by the O&M Requirements;
- (c) there has been a serious or persistent let up in adhering to Safety Requirements and thereby the Bridge, the Project and / or Project Facility or any part thereof is not safe for operations;
- (d) Non-Performance results in 10% of the Bridge, the relevant connecting Roads and the Project Facility being unavailable for a consecutive period of thirty (30) days than the same shall constitute an Event of Default;
- (e) there has been "Persistent Breach of O&M Requirements".



The term “Persistent Breach of O&M Requirements” means:

- (f) any breach of the O&M Requirements that remains un-remedied despite the issuance of Notice of Remedy by the Independent Engineer and / or GoS, as the case may be;
- (g) recurrence of a breach of the O&M Requirements by the Concessionaire during the pendency of a Notice of Remedy; and
- (h) repeated occurrences of breach, notwithstanding that the earlier occurrences of breach may have been remedied pursuant to the Notice of Remedy or otherwise.

Section 19.5 GoS’ Rights with regard to Material Breach of O&M Requirements

- 19.5.1 Upon the occurrence of a Material Breach of O&M Requirements, the GoS shall without prejudice to and notwithstanding any other consequences provided therefor shall have the right and be entitled to terminate this Agreement.

Section 19.6 Priority of Traffic Flow

- 19.6.1 Notwithstanding the performance of the Operation and Maintenance in accordance with the terms of this Agreement, the Concessionaire shall ensure that the Bridge and the Project Facility remains open to traffic and that the traffic flow is safe at all times during Operation Period.
- 19.6.2 The Concessionaire undertakes to conduct the Operation and Maintenance in such manner as to ensure compliance with the obligation set out in sub-section 19.6.1 of Section 19.6 (*Priority of Traffic Flow*).

Section 19.7 Maintenance Manual

- 19.7.1 thirty (30) days prior to the commencement of the Operation Period, the Concessionaire shall, in consultation with the Independent Engineer, prepare a repair and maintenance manual in respect of the Bridge and the Project Facilities setting out the regular preventive maintenance procedures and the Project Facilities, in conformity with the O&M Requirements, the Safety Requirements and Good Industry Practice (“**Maintenance Manual**”). The Maintenance Manual shall include provisions for maintenance of the Project Assets and shall provide for life cycle maintenance, routine maintenance and reactive maintenance which may be reasonably necessary for maintenance and repair of the Project Assets, including replacement thereof, such that their overall condition conforms to Good Industry Practice.
- 19.7.2 four (4) copies of the Maintenance Manual shall be provided by the Concessionaire to the GoS and the Independent Engineer.
- 19.7.3 The Maintenance Manual shall be revised and updated on third anniversary of its initial preparation.



Section 19.8 Maintenance Programme

19.8.1 Ninety (90) days prior to commencement of the Operation Period and thereafter thirty (30) days prior to the commencement of each Accounting Year during the Operation Period, as the case may be, the Concessionaire shall provide to the GoS and the Independent Engineer, the Concessionaire's proposed annual programme of preventive, urgent and other scheduled maintenance, the Project Assets, the Project Facility and the Bridge, to be prepared in compliance with the O&M Requirements, the Maintenance Manual and the Safety Requirements ("**Maintenance Programme**").

19.8.2 The Concessionaire undertakes to provide the Maintenance Programme to the GoS and the Independent Engineer in accordance with the provisions of sub-section 19.8.1 of this Section 19.8 (*Maintenance Programme*) and undertakes that the Maintenance Programme shall include, without restriction, the following:

- (a) preventive maintenance schedule;
- (b) arrangements and procedures for carrying out urgent repairs in respect of the the Bridge, Project Assets and the Project Facilities;
- (c) criteria to be adopted for determining and ascertain the maintenance requirements of the Project;
- (d) the timelines, intervals and procedures for conducting the inspection of all elements of the Project;
- (e) the timelines and intervals at which the Concessionaire shall conduct out periodic maintenance;
- (f) arrangements and procedures for conducting safety related measures; and
- (g) timelines and intervals for maintenance works and the scope thereof.

19.8.3 Within twenty-one (21) days of receipt of the Maintenance Programme, the Independent Engineer shall review the same and convey its comments to the Concessionaire with particular reference to its conformity with the O&M Requirements, the Maintenance Manual and Safety Requirements and the amendments and modifications, if any, that are required in the same. The Concessionaire undertakes to modify the Maintenance Programme in accordance with the comments and observations received from the Independent Engineer.

Section 19.9 Safety, Vehicle Breakdown and Accidents

19.9.1 The Concessionaire shall ensure safe conditions for the Users, and in the event of unsafe conditions, lane closures, diversions, vehicle breakdowns and accidents, it shall follow the relevant operating procedures including the setting up of temporary traffic cones and lights, and removal of obstruction and debris without delay. Such



procedures shall conform to the provisions of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice.

Section 19.10 Emergency Decommissioning

19.10.1 In the event, during the Operation Period, in the reasonable opinion of the Concessionaire, there exists an Emergency that warrants de-commissioning and closure to traffic and / or the Users of the whole or any part of the Bridge and / or the Project Facilities ("**Decommissioned Project Area**"), the Concessionaire shall be entitled to de-commission and close the whole or any part of Decommissioned Project Area, as the case may be to the traffic and / or the Users for so long as such Emergency and the consequences thereof warrant ("**Emergency Decommissioning**"); provided however such Emergency Decommissioning and the particulars thereof shall be notified by the Concessionaire to the GoS and the Independent Engineer without any delay, and the Concessionaire shall diligently abide by the O&M Requirements and the Safety Requirements in dealing with such Emergency Decommissioning and act in accordance with the directions that the GoS and / or the Independent Engineer may issue for dealing with such Emergency Decommissioning.

19.10.2 The Concessionaire hereby undertakes to re-commission the Decommissioned Project Area efficiently and in a time sensitive manner and as quickly as practicable after the circumstances leading to its decommissioning and closure have ceased to exist or have so abated as to enable the Concessionaire to re-commission the Decommissioned Project Area and shall notify the GoS and the Independent Engineer of the same without any delay.

19.10.3 The decommissioning or closure of the Decommissioned Project Area and the re-commissioning thereof shall, as soon as practicable, be brought to the notice of the affected persons / Users by means of public announcements/notice and the same shall be borne by the GOS.

19.10.4 The Independent Engineer shall determine whether the Concessionaire has successfully re-commissioned the Decommissioned Area and made the same available for traffic / Users as soon as practicable upon the termination / ceasing of the circumstances that have resulted in such decommissioning.

Section 19.11 O&M Damages

19.11.1 In the event during the Operation Period:

- (a) the Concessionaire fails to fulfill its obligations in respect of Operation and Maintenance:
- (b) resulting in a delay in the Final Expiry Date;
- (c) breach of the O&M Requirements;



it shall be deemed to be in breach of this Agreement and the GoS shall be entitled to recover O&M Damages for such breach by the Concessionaire.

- 19.11.2 The Concessionaire shall be liable to pay to the GoS damages to upon the occurrence of the events listed in sub-section 19.11.1 of Section 19.11 (*O&M Damages*) which shall accrue on a daily basis for each day (a) that the Concessionaire is in breach of the O&M Requirements; and / or (b) by which the Concession Period is required to be extended; until such breach is rectified / cured and shall be calculated at percent of the cost of the repair or rectification as estimated by the Independent Engineer, for the remaining Concession Period ("**O&M Damages**"). Recovery of such O&M Damages shall be without prejudice to the rights of the GoS under this Agreement, including the right of Termination.
- 19.11.3 In the event that any O&M Damages become due and payable by the Concessionaire to GoS during the Annuity Amount Payment Period, the GoS shall reserve the right to set-off such O&M Damages against the Annuity Amount Payments.
- 19.11.4 In the event the O&M Damages exceed the Annuity Amount Payments or where the O&M Damages become due and payable by the Concessionaire to GoS upon expiry of the Annuity Amount Payment Period, GoS shall reserve the right to set-off such O&M Damages against the Performance Security for O&M.

Section 19.12 GoS' Right to Take Remedial Measures

- 19.12.1 In the event the Concessionaire does not maintain and/or repair the Project or any part thereof in conformity with the Maintenance Requirements, the Maintenance Manual or the Maintenance Programme, as the case may be, and fails to commence remedial works within fifteen (15) days of a notice in this behalf from the GoS or the Independent Engineer, as the case may be, the GoS shall, without prejudice to its rights under this Agreement including Termination thereof, be entitled to undertake such remedial measures at the risk and cost of the Concessionaire, and to recover its cost from the Concessionaire.
- 19.12.2 In addition to recovery of the aforesaid cost, a sum equal to such cost shall be paid by the Concessionaire to the GoS as O&M Damages. For the avoidance of doubt, the right of the GoS under this Section 19.12 (*GoS' Right to take Remedial Measures*) shall be without prejudice to its rights and remedies provided under Section 19.11 (*O&M Damages*).

Section 19.13 Overriding Powers of GoS

- 19.13.1 Notwithstanding anything contained in this Agreement, the GoS shall have the right upon the occurrence of a national emergency, civil commotion and / or as a consequence of a Force Majeure Event, to take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by the GoS or as directed by the Government, and exercise such control over the Bridge, the relevant



connecting roads, the Project Assets and the Project Facilities and / or give such directions to the Concessionaire as may be deemed necessary by the GoS; provided however, that the exercise of such overriding powers by the GoS shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which causes the exercise of such overriding power by the GoS.

19.13.2 The Parties agree that the consequences of the actions set out in sub-section 19.13.1 of this Section 19.13 (*Overriding Powers of GoS*) shall be dealt in accordance with the provisions of Section 21.3 (*Consequences of Force Majeure*).

19.13.3 The Concessionaire hereby unconditionally and irrevocably agrees to act in accordance with the instructions issued by the GoS pursuant to the provisions of sub-section 19.13.1 of this 0 (*Overriding Powers of GoS*) and undertakes to provide assistance and co-operation to the GoS, on a best effort basis, for performance of its obligations hereunder.

Section 19.14 Restoration of loss or damage to Project

19.14.1 Save and except as otherwise expressly provided in this Agreement, in the event that the Project or any part thereof suffers any loss or damage during the Concession Period from any cause whatsoever, the Concessionaire shall, at its cost and expense, rectify and remedy such loss or damage forthwith so that the Project conforms to the provisions of this Agreement.

Section 19.15 Modifications to the Project

19.15.1 The Concessionaire shall not carry out any material modifications to the Project, save and except where such modifications are necessary for the Project to operate in conformity with the Project Requirements, the Good Industry Practice and Applicable Law; provided that the Concessionaire shall notify the Independent Engineer and GoS of the proposed modifications along with particulars thereof at least thirty (30) days before commencing work on such modifications and shall reasonably consider any suggestions that the Independent Engineer may make within fifteen (15) days of receiving the Concessionaire's proposal. For the avoidance of doubt, all modifications made hereunder shall comply with the Project Requirements, Applicable Laws and the provisions of this Agreement.

Section 19.16 Barriers and diversions

19.16.1 The GoS shall procure that during the Operation Period, no barriers are erected or placed by any Government Agency on the Project except for reasons of Emergency, national security, Law and order.

Section 19.17 Monthly Status Reports

19.17.1 During Operation Period, the Concessionaire shall, no later seven (7) days after the close of each month, furnish to the GoS and the



Independent Engineer a monthly report stating in reasonable detail the condition of the Project including its compliance or otherwise with the Maintenance Requirements, Maintenance Manual, Maintenance Programme and Safety Requirements, and shall promptly give such other relevant information as may be required by the Independent Engineer. In particular, such report shall separately identify and state in reasonable detail the defects and deficiencies that require rectification.

Section 19.18 Inspection

19.18.1 The Independent Engineer shall inspect the Project at least once a month. It shall make a report of such inspection ("**O&M Inspection Report**") stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Maintenance Requirements, Maintenance Manual, the Maintenance Programme and Safety Requirements, and send a copy thereof to the GoS and the Concessionaire within five (5) days of such inspection.

Section 19.19 O&M Tests

19.19.1 For determining that the Project Works undertaken during the Operations Period conform to the Maintenance Requirements, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests specified in **Schedule U** (*List of Tests*) in accordance with Good Industry Practice ("**O&M Tests**"). The Concessionaire shall, with due diligence, carry out or cause to be carried out all such tests in accordance with the instructions of the Independent Engineer and furnish the results of such tests forthwith to the Independent Engineer.

Section 19.20 Remedial Measures

19.20.1 The Concessionaire shall repair or rectify the defects or deficiencies, if any, set forth in the O&M Inspection Report or in the test results referred to in Section 19.19 (*O&M Tests*) and furnish a report in respect thereof to the Independent Engineer and the GoS within seven (7) days of receiving the O&M Inspection Report or the test results, as the case may be; provided that where the remedying of such defects or deficiencies is likely to take more than seven (7) days, the Concessionaire shall submit progress reports of the repair works once every week until such works are completed in conformity with this Agreement.

19.20.2 The Independent Engineer shall require the Concessionaire to carry out or cause to be carried out the O&M Tests, at its own cost, to determine that such remedial measures have brought the Project into compliance with the Maintenance Requirements and the procedure set forth in this Section 19.4 (*Material Breach of O&M Requirements*) shall be repeated until the Project conforms to the Maintenance Requirements. In the event that remedial measures are not completed by the Concessionaire in conformity with the provisions of this Agreement, the GoS shall be entitled to recover O&M Damages from the Concessionaire.



ARTICLE 20 INSURANCES

Section 20.1 Construction Period Insurances

20.1.1 The Concessionaire shall, at its sole cost and expense, procure and maintain during the Construction Period such Insurances as are necessary and / or required to be procured by the Concessionaire in accordance with the Financing Documents, Good Industry Practice and / or Applicable Laws; including but not restricted to the following:

- (a) contractors' all risk insurance;
- (b) riot, strike, civil commotion and terrorism insurance cover equivalent;
- (c) comprehensive third party liability insurance including injury or death to personnel / representatives of Persons who may enter the Project Site;
- (d) workmen's compensation insurance;
- (e) any other insurance that may be necessary to protect the Concessionaire, its employees and its assets against loss, damage, destruction, business interruption or loss of profit including insurance against all Force Majeure Events that are insurable.

Section 20.2 Operation Period Insurance

20.2.1 The Concessionaire shall, at its sole cost and expense, procure and maintain during the Operation Period, such Insurances as are necessary and / or required to be procured by the Concessionaire in accordance with the Financing Documents, Good Industry Practice and / or Applicable Laws; including but not restricted to the following:

- (a) loss, damage or destruction of the Project Facility, at replacement value;
- (b) riot, strike, civil commotion and terrorism insurance cover equivalent;
- (c) the Concessionaire's general liability arising out of the Concession;
- (d) liability to third parties;
- (e) any other insurance that may be necessary to protect the Concessionaire, its employees and its assets against loss, damage, destruction, business interruption or loss of profit including insurance against all Force Majeure Events that are insurable.

Section 20.3 Insurance Companies

20.3.1 The Concessionaire agrees that it shall procure the Insurances from such insurance companies that are acceptable to the GoS and further agrees that the Concessionaire shall only procure Insurances through foreign insurance companies if the relevant Insurances are not being offered by local companies at comparable rates, subject always to the prior consent of the GoS.



Section 20.4 Evidence of Insurances

20.4.1 The Concessionaire shall, from time to time, provide to the GoS copies of all insurance policies (or appropriate endorsements, certifications or other satisfactory evidence of insurance) obtained by the Concessionaire in accordance with this Agreement.

Section 20.5 Application of Insurance Proceeds

20.5.1 Subject to the provisions of the Financing Documents, all moneys received under the Insurance shall be promptly applied by the Concessionaire towards repair, renovation, restoration and / or substitution of the Project, Project Facility and / or the Project Assets or any part thereof which may have been damaged or destroyed.

20.5.2 The Concessionaire may designate the Lenders as the loss payees under the Insurance and / or assign the Insurance in their favour as security for the finance facilities availed by the Concessionaire from the Lenders pursuant to the Financing Agreements.

20.5.3 The Concessionaire shall carry out the repair, renovation, restoration and / or substitution to the extent possible in such manner that the Project Facility or any part thereof, shall, after such repair, renovation, restoration and / or substitution be as far as possible in the same condition as they were before such damage or destruction, normal wear and tear excepted.

Section 20.6 Validity of Insurances

20.6.1 The Concessionaire hereby undertakes to promptly pay the insurance premium in respect of the Insurances and to keep the policies in force and valid during the entire the Concession Period. The Concessionaire shall provide to the GoS, copies of the renewed policies and other documentary evidence of the payment of the insurance premium in respect of the Insurances.

20.6.2 The Concessionaire shall ensure that each instrument, contract and / or policy issued in respect of the Insurances shall provide that the Insurance may not be cancelled and / or terminated without at least ten (10) days prior written notice to the GoS of such cancellation and / or termination.

20.6.3 Notwithstanding anything contained herein, in the event the Concessionaire fails to comply with its obligations to procure the Insurances in accordance with Section 20.1 (*Construction Period Insurances*) and / or Section 20.2 (*Operation Period Insurances*), then the GoS may, without prejudice to its other rights and remedies for breach, at its option, obtain and maintain such Insurance and all sums incurred by the GoS therefor shall be reimbursed by the Concessionaire to the GoS within seven (7) days from the receipt of a claim by the Concessionaire in respect thereof from the GoS.



20.6.4 The Concessionaire shall notify the GoS in advance, prior to any material variation of the Insurances.

ARTICLE 21 FORCE MAJEURE

Section 21.1 Force Majeure Event

21.1.1 The occurrence of a Force Majeure Event shall mean the occurrence of any of the Force Majeure Events which prevents the Party claiming Force Majeure ("**Affected Party**") from performing its obligations under this Agreement and such event:

- (a) is beyond the reasonable control of and not arising out of the fault of the Affected Party;
- (b) the Affected Party is or has been unable to overcome such act or event by the exercise of due diligence and reasonable efforts, skill and care; and
- (c) has a Material Adverse Effect on the Project.

Section 21.2 Obligation to Notify

21.2.1 Notwithstanding anything contained herein, the Affected Party shall, as soon as practicable, and in any case within seven (7) days of the date of occurrence of a Force Majeure Event or from the date of having knowledge thereof, notify the Independent Engineer and the other Party, of the occurrence of the Force Majeure Event by the issuance of a notice in writing ("**Force Majeure Notice**").

21.2.2 The Affected Party shall provide all relevant details in respect of the Force Majeure Event in the Force Majeure Notice, including but not restricted to the following:

- (a) the nature and extent of the Force Majeure Event;
- (b) the estimated Force Majeure Period;
- (c) the nature of and the extent to which, performance of any of the Affected Party's obligations under this Agreement are affected by the Force Majeure Event;
- (d) the measures which the Affected Party has taken or proposes to undertake to alleviate/mitigate the impact of the Force Majeure Event and to resume performance of such of its obligations that are affected by the Force Majeure Event; and
- (e) any other relevant information concerning the Force Majeure Event, and /or the rights and obligations of the Parties under this Agreement.

21.2.3 The Parties shall, as soon as practicable upon the receipt of the Force Majeure Notice and in any case within five (5) days from the date of receipt of the same, convene a meeting, along with the Independent Engineer for the purpose of conducting discussions, in good faith, and



where necessary the Parties shall agree to conduct inspections and / or surveys of the Project in order to:

- (a) assess the impact of the underlying Force Majeure Event;
- (b) to determine the likely duration of Force Majeure Period ; and
- (c) to formulate damage mitigation measures and the steps to be undertaken by the Parties for resumption of the obligations, the performance of which had been affected by the Force Majeure Event.

21.2.4 The Affected Party shall during the Force Majeure Period provide to the other Party with regular (not less than weekly) reports in respect of the matters set out sub-section 21.2.3 of this Section 21.2 (*Obligation to Notify*) and such other information, details and / or documents, that the other Party may reasonably require.



Section 21.3 Consequence of Force Majeure Event

21.3.1 Upon occurrence of a Force Majeure Event, the following shall apply:

21.3.2 there shall be no Termination of this Agreement except in accordance with the provisions of Article 23 (*Termination*);

- (a) in the event the Force Majeure Event occurs:
- (b) at any time prior to the Final Completion Date than the dates set forth in the Project Completion Schedule, and the Concession Period shall be extended by the period for which such Force Majeure Event shall subsist;
- (c) at any time after the occurrence of the Final Completion Date, than the Concessionaire shall continue to make all reasonable efforts to operate the Project, provided however; if the Concessionaire is unable or prevented from doing so, the Concession Period shall, having due regard to the extent of the impact thereof as determined by the Project Implementation Unit, be extended by the period through which its agreed return remains affected on account thereof; and

21.3.3 Costs arising out of or concerning such Force Majeure Event shall be borne in accordance with the provisions of the Section 21.4 (*Allocation of Costs Arising out of Force Majeure*).

Section 21.4 Allocation of Costs Arising Out of Force Majeure

21.4.1 Upon occurrence of a Force Majeure Event after the Final Project Completion Date, the costs incurred and attributable to such event and directly relating to the Project, as verified and certified by the Independent Auditor and Independent Engineer (the "**Force Majeure Costs**") shall be allocated and paid as follows:

- (a) upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof;
- (b) upon occurrence of an Indirect Political Event, all Force Majeure Costs attributable to such Indirect Political Event, and not exceeding the Insurance cover for such Indirect Political Event, shall be borne by the Concessionaire, and to the extent Force Majeure Costs exceed such Insurance cover, one half of such excess amount shall be reimbursed by the GoS to the Concessionaire; and
- (c) upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by the GoS to the Concessionaire.

21.4.2 For the avoidance of doubt, Force Majeure Costs may include interest payments on debt, O&M Expenses and all other costs directly attributable to the Force Majeure Event, but shall not include loss of debt repayment obligations, and for determining such costs,



information contained in the Financial Model may be relied upon to the extent that such information is relevant.

21.4.3 Save and except as expressly provided in this Section 21.4 (*Allocation of Costs Arising out of Force Majeure*), neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

Section 21.5 Termination Notice for Force Majeure Event

21.5.1 If a Force Majeure Event subsists for a period of fifteen (15) days or more within a continuous period of seven (7) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Section 21.5 (*Termination Notice for Force Majeure*), and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant fifteen (15) days' time to make a representation, and may after the expiry of such fifteen (15) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

Section 21.6 Termination Payment for Force Majeure Event

21.6.1 If Termination is on account of a Non-Political Event, the GoS shall make a Termination Payment to the Concessionaire in an amount equal to eighty-five percent (85%) of the Debt Due less pending insurance claims.

21.6.2 If Termination is on account of an Indirect Political Event, the GoS shall make a Termination Payment to the Concessionaire in an amount equal to:

- (a) the total Debt Due, Plus.
- (b) 50 percent of the Equity subscribed in cash and actually spent on the Project if such Termination occurs at any time during 1 year commencing from the Commencement Date and for each successive year thereafter, such amount shall be adjusted every year to fully reflect the changes in CPI during such year and the adjusted amount so arrived at shall be reduced by 10% percent per annum.

21.6.3 If Termination is on account of a Political Event, the GoS shall make a Termination Payment to the Concessionaire in an amount equal to:

- (a) Equity subscribed in cash and actually spent on the less dividends and other distributions paid to the shareholders of the Concessionaire, plus



- (b) to the extent it is a positive amount the Termination Dividend Amount on the Termination Date and the Termination Dividend Amount for each of the preceding three (3) Accounting Years.

Section 21.7 Force Majeure Dispute Resolution

21.7.1 In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such Dispute shall be finally settled in accordance with the Dispute Resolution Procedure; provided that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief and/or excuse on account of such Force Majeure Event.

Section 21.8 Excuse from Performance of Obligations

21.8.1 If the Affected Party is rendered wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure Event, it shall be excused from performance of such of its obligations to the extent it is unable to perform on account of such Force Majeure Event; provided that:

- (a) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;
- (b) the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and
- (c) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder.

ARTICLE 22 EVENTS OF DEFAULT

Section 22.1 Concessionaire Event of Default

22.1.1 Any of the following events shall constitute an event of default by the Concessionaire ("**Concessionaire Event of Default**") unless such event has occurred as a consequence of Permitted Events:

- (a) the Concessionaire fails to commence the Construction Works within fifteen (15) days from the Commencement Date;
- (b) the Concessionaire fails to achieve Project Completion on the Final Project Completion Date;
- (c) any representation made or warranties given by the Concessionaire under this Agreement is found to be false or misleading;



- (d) the Concessionaire creates any Encumbrance on the Project Site/ Project Facility in favour of any Person save and except as otherwise expressly permitted in terms of this Agreement;
- (e) the transfer, pursuant to law of either (a) the rights and/or obligations of the Concessionaire under any of the Project Agreements, or (b) all or material part of the Concessionaire; provided however where such transfer in the reasonable opinion of the GoS does not affect the ability of the Concessionaire to perform its obligations, and the Concessionaire has the financial and technical capability to perform, its material obligations under the Project Agreements;
- (f) any petition for winding up of the Concessionaire is admitted by a court of competent jurisdiction or the Concessionaire is ordered to be wound up by Court except for the purpose of amalgamation or reconstruction, provided that, as part of such amalgamation or reconstruction, the property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the Project Agreements, and provided that:
- (g) the amalgamated or reconstructed entity has the technical capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
- (h) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Concessionaire as at Commencement Date; and
- (i) each of the Project Agreements remains in full force and effect;
- (j) a default has occurred under any of the Financing Documents and any of the Lenders has recalled its financial assistance and demanded payment of the amounts outstanding under the Financing Documents or any of them as applicable;
- (k) the Concessionaire suspends or abandons the operations of the Project without the prior consent of the GoS, provided that the Concessionaire shall be deemed not to have suspended/ abandoned operation if such Suspension/ abandonment is as a consequence of:
- (l) Force Majeure Event and is only for the period such Force Majeure is continuing; or
- (m) is on account of a breach of its obligations under this Agreement by the GoS;
- (n) the Concessionaire repudiates this Agreement or otherwise evidences an intention not to be bound by this Agreement;
- (o) the Concessionaire suffers an attachment being levied on any of its assets causing a Material Adverse Effect on the Project and such attachment continues for a period exceeding fifteen (15) days;



- (p) the Concessionaire has delayed any payment that has fallen due under this Agreement and if such delay exceeds ten (10) days;
- (q) the Concessionaire is otherwise in Material Breach of this Agreement.

Section 22.2 GoS Event of Default

22.2.1 The following events shall constitute events of default by the GoS ("**GoS Event of Default**"), unless any such GoS Event of Default has occurred and / or results from the Concessionaire Event of Default or Force Majeure Event:

- (a) the GoS is in breach of this Agreement and has failed to cure such breach within forty-five (45) days of receipt of notice in that behalf from the Concessionaire;
- (b) the GoS repudiates this Agreement or otherwise evidences an intention not to be bound by the Agreement;
- (c) the GoS is in breach of any of its obligations under the Agreement, and such breach has not been cured within forty-five (45) days from the date of written notice thereof by the Concessionaire;
- (d) the GoS or any Governmental Agency acts in a manner that has a Material Adverse Effect on the performance of its obligations by the Concessionaire and has failed to cure the same within forty-five (45) days of notice thereof by the Concessionaire;
- (e) the Annuity Amount Payment due and payable to the Concessionaire in terms of this Agreement remains unpaid by the GoS for an period of ninety (90) days from the date on which the same was payable in terms of this Agreement; provided however this sub-section (e) is only applicable to such Annuity Amount Payment in respect of which there is no dispute and / or conflict between the Parties;
- (f) any representation made or warranties given by the GoS under this Agreement is found to be false or misleading.

ARTICLE 23 TERMINATION

Section 23.1 Termination for Concessionaire Event of Default

23.1.1 Without prejudice to any other right or remedy which the GoS may have in respect thereof under this Agreement, upon the occurrence of a Concessionaire Event of Default, the GoS shall, subject to the provisions of the Substitution Agreement, be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire, provided that before issuing the Termination Notice, the GoS shall by a notice in writing inform the Concessionaire of its intention to issue the Termination Notice ("**Preliminary Notice**").

23.1.2 In the event, the underlying breach/default is not cured within a period of fifteen (15) days from the date of the Preliminary Notice ("**Cure**



Period) the GoS shall be entitled, to terminate this Agreement by issuing the Termination Notice, provided:

- (a) the default is not cured within fifteen (15) days of the Preliminary Notice, the GoS shall be entitled to encash the Performance Security with a notice to the Concessionaire ("**Encashment Notice**");
- (b) the default is not cured within fifteen (15) days of the Encashment Notice and a fresh Performance Security is not furnished in accordance with the provisions of Article 11 (*Performance Security*), the GoS shall subject to the provisions of the Substitution Agreement be entitled to issue the Termination Notice.

23.1.3 The following shall apply in respect of cure of any of the defaults and/or breaches of this Agreement:

- (a) the Cure Period provided in this Agreement shall not relieve the Concessionaire from liability for damages caused by its breach or default;
- (b) the Cure Period shall not in any way be extended by any period of Suspension under this Agreement;
- (c) if the cure of any breach by the Concessionaire requires any reasonable action by Concessionaire that must be approved by the GoS or the Government Agency hereunder the applicable Cure Period shall be extended by the period taken by the GoS or the Government Agency to accord the required approval.

23.1.4 Upon Termination by the GoS on account of occurrence of a Concessionaire Event of Default during the Operation Period:

- (a) the instrument of guarantee shall stand cancelled with immediate effect;
- (b) the right of the Concessionaire to the Annuity Amount Payments shall stand terminated with immediate effect and no Annuity Amount Payments shall accrue and / or be payable to the Concessionaire from the date of occurrence of the Concessionaire Event of Default, provided however the GoS shall effect payment of the undisputed, accrued and unpaid Annuity Amount Payments up to the date of the Concessionaire Event of Default, subject to the provisions of (c) below;
- (c) the GoS shall pay to the Concessionaire by way of Termination Payment an amount equal to eighty-five percent (85%) of the Debt Due less pending Insurance claims, if any; Provided further the GoS may set-off the amount payable as Termination Payment against the undisputed, accrued and unpaid Annuity Amount Payment.

Section 23.2 Termination for GoS Event of Default

23.2.1 Upon the occurrence and continuation of any of the GoS Event of Default, the Concessionaire shall by a notice in writing inform the GoS of its intention to issue the Termination Notice ("**Preliminary Notice**").

23.2.2 In the event, the underlying breach/default is not cured within a period of forty-five (45) days from the date of the Preliminary Notice ("**Cure**



Period”) the Concessionaire shall be entitled, to terminate this Agreement by issuing the Termination Notice.

23.2.3 Upon Termination of this Agreement by the Concessionaire due to a the GoS Event of Default, the Concessionaire shall be entitled to receive from the GoS, by way of Termination Payment a sum equal to:

- (a) the total Debt Due, plus
- (b) Equity plus to the extent it is a positive amount the Termination Dividend Amount on the Termination Date and the Termination Dividend Amount in each for the following three (3) years.

Section 23.3 Termination for Corrupt Acts

23.3.1 The Concessionaire warrants that in entering into this Concession Agreement it has not committed any Corrupt Act.

23.3.2 If any Corrupt Act is committed or is reasonably suspected by GOS of having been committed, then GOS shall be entitled to act in accordance with sub-sections (a) to 23.3.3 below:

- (a) if the Corrupt Act is committed by the Concessionaire or any Associated Undertaking¹ of the Concessionaire, as the case may be, then in any such case, GOS may terminate this Concession Agreement with immediate effect by giving written notice to the Concessionaire;
- (b) if the Corrupt Act is committed by an employee of the Concessionaire, then in any such case, GOS may give written notice to the Concessionaire of termination and this Concession Agreement will terminate, unless within forty-five (45) days of the Concessionaire's receipt of such notice that employee's involvement in the Project is terminated and (if necessary) the performance of any part of the Project Deliverables previously performed by him or her is performed by another person;
- (c) if the Corrupt Act is committed by the Contractor, then in any such case, GOS may give written notice to the Concessionaire of termination and this Concession Agreement will terminate, unless within forty-five (45) days of its receipt of such notice the Concessionaire terminates the relevant contract and procures the performance of the relevant part of the Project and / or the Construction Works by another person;
- (d) if the Corrupt Act is committed by an employee of Contractor, then GOS may give notice to the Concessionaire of termination and this Concession Agreement will terminate, unless within thirty (30) days of its receipt of such notice the Concessionaire procures the termination of that employee's involvement in the Project and (if necessary) procures the performance of that part of the Project and / or the Construction Works previously performed by that employee to be performed by another person;

¹ Shall have the same meaning as ascribed to in section 2 (2) of the Companies Ordinance, 1984.



23.3.3 if the Corrupt Act is committed by any other person not specified in sub-section (a) to (d) above but involved in the Project as a subcontractor or supplier to any Subcontractor or to the Concessionaire, then GOS may give notice to the Concessionaire of termination and this Concession Agreement will terminate unless within thirty (30) days the Concessionaire procures the termination of such person's involvement in the Project and (if necessary) procures the performance of the relevant contract and procures the performance of the relevant part of the Project and / or the Construction Works by another person.

23.3.4 Any notice of termination under this Clause shall specify:

- (a) the nature of the Corrupt Act;
- (b) the identity of the party or parties who GOS believes has committed the Corrupt Act; and
- (c) the date on which this Concession Agreement will terminate in accordance with the applicable provisions of this Section.

23.3.5 Without prejudice to its other rights or remedies under this Section, GOS shall be entitled to recover from the Concessionaire, the greater of:

- (a) the amount or value of the gift, consideration or commission which is the subject of the Corrupt Act; and
- (b) any direct losses sustained by GOS in consequence of any breach of this Section by the Concessionaire.

23.3.6 Nothing contained in this Section shall prevent the Concessionaire from paying any proper commission or bonus to its employees within the agreed terms of their employment

Section 23.4 Rights of the GoS on Termination

23.4.1 Upon Termination of this Agreement for any reason whatsoever, the GoS shall have the power and authority to:

- (a) take possession and control of Project, Bridge, Project Facility, Project Assets with immediate effect;
- (b) prohibit the Concessionaire and any person claiming through or under the Concessionaire from entering upon the Project Assets/dealing with or any part thereof;

23.4.2 step in and succeed upon election by the GoS without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Agreements as the GoS may in its discretion deem appropriate with effect from the date of communication of such election to the counter party to the relative Project Agreements. Provided any sums claimed by such counter party



as being due and owing for work and services performed or accruing on account of any act, omission or event prior to such date of election shall and shall always constitute debt between the Concessionaire and such counter party and the GoS shall in no way or manner be liable or responsible for such sums. The Concessionaire shall ensure that the Project Agreements contain provisions necessary to give effect to the provision of this Section 23.4 (*Rights of the GoS on Termination*).

Section 23.5 Termination Payments

- 23.5.1 The Termination Payment pursuant to Article 23 (*Termination*) or as the case may be, shall be payable to the Concessionaire by the GoS within one hundred and eighty days of demand being made by the Concessionaire, subject to the same being duly certified by the Independent Engineer and Independent Auditor. The GoS shall effect payment only upon the transfer and divestment as set out in this Agreement.
- 23.5.2 GoS shall reserve the right to set-off Termination Payments against all costs incurred by the GoS as a result of Termination of the Concession Agreement, including but not limited to the costs to be incurred by the GoS in respect of re-tendering the Project.

Section 23.6 Mode of Payment

- 23.6.1 Notwithstanding any instructions to the contrary issued or any dispute raised by the Concessionaire, the Termination Payment, and all other payments that are or may be payable by the GoS under any of the provisions of this Agreement shall, so long as the Debt Due is remaining outstanding, be made only by way of credit directly to a bank account designated therefor by the Lenders and advised to the GoS and the Concessionaire in writing. Any payment so made shall to the extent of such payment constitute a valid discharge to the GoS of its obligations towards the Concessionaire with regard to the Termination Payment and payment of any other monies due hereunder.
- 23.6.2 Notwithstanding anything to the contrary contained in this Agreement, any Termination pursuant to the provisions of this Agreement shall be without prejudice to accrued rights of either Party including its right to claim and recover money damages and other rights and remedies which it may have in law or contract. All rights and obligations of either Party under this Agreement, including without limitation Termination Payment, shall survive the Termination of this Agreement to the extent such survival is necessary for giving effect to such rights and obligations.



ARTICLE 24 DIVESTMENT OF RIGHTS AND INTEREST

Section 24.1 Requirements for Divestment

24.1.1 Upon Termination, the Concessionaire shall comply with and conform to the following requirements (“**Divestment Requirements**”):

- (a) notify to the GoS forthwith the location and particulars of all Project Assets;
- (b) deliver forthwith the actual or constructive possession of the Project, free and clear of all Encumbrances, save and except to the extent set forth in the Substitution Agreement;
- (c) cure all Project Assets, including the road, bridges, structures and equipment, of all defects and deficiencies so that the Project is compliant with the Maintenance Requirements; provided that in the event of Termination during the Construction Period, all Project Assets shall be handed over on ‘as is where is’ basis after bringing them to a safe condition;
- (d) deliver and transfer relevant records, reports, Intellectual Property and other licences pertaining to the Project and its design, engineering, construction, operation and maintenance, including all programmes and manuals pertaining thereto, and complete ‘as built’ Drawings as on the Transfer Date. For the avoidance of doubt, the Concessionaire represents and warrants that the Intellectual Property delivered hereunder shall be adequate and complete for the design, engineering, construction, operation and maintenance of the Project and shall be assigned to the GoS free of any encumbrance;
- (e) transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;
- (f) execute such deeds of conveyance, documents and other writings as the GoS may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Concessionaire in the Project, including manufacturers’ warranties in respect of any plant or equipment and the right to receive outstanding insurance claims to the extent due and payable to the GoS, absolutely unto the GoS or its nominee; and
- (g) comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Concessionaire in the Project, free from all Encumbrances, absolutely unto the GoS or to its nominee.

24.1.2 Subject to the exercise by the GoS of its rights under this Agreement or under any of the Project Agreements to perform or procure the performance by a third party of any of the obligations of the Concessionaire, the Parties shall continue to perform their obligations under this Agreement, notwithstanding the giving of any Termination Notice, until the Termination of this Agreement becomes effective in accordance with its terms.



Section 24.2 Inspection and Cure

- 24.2.1 Not earlier than thirty (30) days prior to Termination but not later than fifteen (15) days prior to the effective date of such Termination, the Independent Engineer shall verify, after giving due notice to the Concessionaire of the time, date and venue of such verification, compliance by the Concessionaire with the Maintenance Requirements, and if required, cause appropriate tests to be carried out at the Concessionaire's cost for this purpose. Defaults, if any, in the Maintenance Requirements shall be cured by the Concessionaire at its cost and the provisions of Article 28 shall apply, *mutatis mutandis*, in relation to curing of defects or deficiencies under this Section 24.2 (*Inspection and Cure*).
- 24.2.2 Until the Transfer Date and / or the Final Expiry Date, as the case may be, all risks shall lie with the Concessionaire for loss of or damage to the whole or any part of the Project, the Project Assets, the Bridge and the relevant connecting Roads and the Project Facility and on and from the Transfer Date and / or the Final Expiry Date, as the case may be, all risks in relation to the same shall be deemed to have been transferred to and lie with the GoS.

Section 24.3 Cooperation and Assistance for Transfer of the Project

- 24.3.1 The Parties shall cooperate on a best effort basis and take all necessary measures, in good faith, to achieve a smooth transfer of the Project in accordance with the provisions of this Agreement so as to protect the safety of and avoid undue delay or inconvenience to the users, other members of the public or the lawful occupiers of any part of the Site.
- 24.3.2 The Parties shall provide to each other, two (2) months prior to each Transfer Date in the event of Termination by efflux of time and immediately in the event of either Party conveying to the other Party its intent to issue a Termination Notice, as the case may be, as much information and advice as is reasonably practicable regarding the proposed arrangements for operation of the Project following the Transfer Date. The Concessionaire shall further provide such reasonable advice and assistance as the GoS, its concessionaire or agent may reasonably require for operation of the Project until the expiry of three (3) months after the Transfer Date.

Section 24.4 Vesting Certificate

- 24.4.1 The divestment of all rights, title and interest in the Project shall be deemed to be complete on the date when all of the Divestment Requirements have been fulfilled, and the GoS shall, without unreasonable delay, thereupon issue a certificate substantially in the form set forth in Schedule W ("**Vesting Certificate**"), which will have the effect of constituting evidence of divestment by the Concessionaire of all of its rights, title and interest in the Project, and their vesting in the GoS pursuant hereto. It is expressly agreed that any defect or deficiency in the Divestment Requirements shall not in any manner be



construed or interpreted as restricting the exercise of any rights by the GoS or its nominee on, or in respect of, the Project on the footing that all Divestment Requirements have been complied with by the Concessionaire.

Section 24.5 Additional Facilities

24.5.1 Notwithstanding anything to the contrary contained in this Agreement, all Additional Facilities shall continue to vest the GoS upon and after Termination and that all benefits derived from the Additional Facilities shall stand transferred to the GoS post Termination.

Section 24.6 Divestment Costs

24.6.1 The Concessionaire shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Concessionaire in the Project in favour of the GoS upon Termination, save and except that all stamp duties payable on any deeds or Documents executed by the Concessionaire in connection with such divestment shall be borne by the GoS.

24.6.2 In the event of any dispute relating to matters covered by and under this Article 24 (*Divestment of Rights and Interest*), the Dispute Resolution Procedure shall apply.

ARTICLE 25 DEFECTS LIABILITY AFTER TERMINATION

Section 25.1 Liability for defects after Termination

25.1.1 The Concessionaire shall be responsible for all defects and deficiencies in the Project for a period of ninety (90) days after Termination, and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Independent Engineer in the Project during the aforesaid period. In the event that the Concessionaire fails to repair or rectify such defect or deficiency within a period of fifteen (15) days from the date of notice issued by the GoS in this behalf, the GoS shall be entitled to get the same repaired or rectified at the Concessionaire's risk and cost so as to make the Project conform to the Maintenance Requirements. All costs incurred by the GoS hereunder shall be reimbursed by the Concessionaire to the GoS within thirty (30) days of receipt of demand thereof, and in the event of default in reimbursing such costs; the GoS shall be entitled to recover the same from the Performance Security.

ARTICLE 26 DISCLAIMER

Section 26.1 Disclaimer

26.1.1 The Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has, after a complete and careful examination, made an independent evaluation of the EOI, RFP, Scope of the Project, Specifications and Standards, Project Requirements, Project



Site, existing structures, local conditions, physical qualities of ground, subsoil and geology, traffic volumes and all information provided by the GoS or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. The GoS makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumptions, statement or information provided by it and the Concessionaire confirms that it shall have no claim whatsoever against the GoS in this regard.

- 26.1.2 The Concessionaire acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in sub-section 26.1.1 of this Section 26.1 (*Disclaimer*) and hereby acknowledges and agrees that the GoS shall not be liable for the same in any manner whatsoever to the Concessionaire, the Consortium and their Associates or any person claiming through or under any of them.
- 26.1.3 The Parties agree that any mistake or error in or relating to any of the matters set forth in sub-section 26.1.1 of this Section 26.1 (*Disclaimer*) above shall not vitiate this Agreement, or render it voidable.
- 26.1.4 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in sub-section 26.1.1 of this Section 26.1 (*Disclaimer*) above, such Party shall immediately notify the other Party, specifying the mistake or error; provided however, it is expressly agreed between the Parties that any such failure on part of the GoS to give any notice pursuant to this sub-section 26.1.4 of Section 26.1 (*Disclaimer*) shall not prejudice the disclaimer of the GoS contained in sub-section 26.1.1 of this Section 26.1 (*Disclaimer*) and shall not in any manner shift to the GoS any risks assumed by the Concessionaire pursuant to this Agreement.
- 26.1.5 Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Concessionaire and the GoS shall not be liable in any manner for such risks or the consequences thereof.

ARTICLE 27 ASSIGNMENT AND CHARGES

Section 27.1 Restriction on Assignment and Charges

- 27.1.1 Subject to Section 27.2 (*Permitted Assignment and Charges*) and Section 27.3 (*Substitution Agreement*), this Agreement shall not be assigned by the Concessionaire to any person, save and except with the prior consent in writing of the GoS, which consent the GoS shall be entitled to decline without assigning any reason.
- 27.1.2 Subject to the provisions of Section 27.2 (*Permitted Assignment and Charges*), the Concessionaire shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which



the Concessionaire is a party except with prior consent in writing of the GoS, which consent the GoS shall be entitled to decline without assigning any reason.

Section 27.2 Permitted Assignment and Charges

27.2.1 The restriction set forth in sub-section 27.1.2 of Section 27.1 (*Restriction on Assignment and Charges*) shall not apply to:

- (a) liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Project;
- (b) mortgages/pledges/hypothecation of goods/assets other than Project Assets and their related documents of title, a charge on the Escrow Account, arising or created in the ordinary course of business of the Project, and as security only for indebtedness to the Senior Lenders under the Financing Agreements ;
- (c) assignment of rights, interest and obligations of the Concessionaire to or in favour of the Lenders' Representative as nominee and for the benefit of the Senior Lenders, to the extent covered by and in accordance with the Substitution Agreement as security for financing provided by Senior Lenders under the Financing Agreements; and
- (d) liens or encumbrances required by any Applicable Law.

Section 27.3 Substitution Agreement

27.3.1 Upon substitution of the Concessionaire under and in accordance with the Substitution Agreement, the Nominated Company substituting the Concessionaire shall be deemed to be the Concessionaire under this Agreement and shall enjoy all rights and be responsible for all obligations of the Concessionaire under this Agreement as if it were the Concessionaire; provided that where the Concessionaire is in breach of this Agreement on the date of such substitution, the GoS shall by notice grant a Cure Period of thirty (30) days to the Concessionaire for curing such breach.

Section 27.4 Assignment by the GoS

27.4.1 Notwithstanding anything to the contrary contained in this Agreement, the GoS may, after giving fifteen (15) days' notice to the Concessionaire, assign and/ or transfer any of its rights and benefits and/or obligations under this Agreement to an assignee who is, in the reasonable opinion of the GoS, capable of fulfilling all of the GoS' then outstanding obligations under this Agreement.

ARTICLE 28 CHANGE IN LAW

Section 28.1 Increase in Costs

28.1.1 If as a result of Change in Law, the Concessionaire suffers an increase in costs or reduction in net after-tax return or other financial burden, the aggregate financial effect of which exceeds of PKR 10,000,000 (Pak



Rupees Ten Million) in any Accounting Year, the Concessionaire may so notify the GoS and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the cost increase, reduction in return or other financial burden as aforesaid. Upon notice by the Concessionaire, the Parties shall meet, as soon as reasonably practicable but no later than thirty (30) days from the date of notice, and either agree on amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within one hundred and eighty (180) days of the aforesaid notice, the Concessionaire may by notice require the GoS to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within sixty (60) days of receipt of such notice, along with particulars thereof, the GoS shall pay the amount specified therein; provided that if the GoS shall dispute such claim of the Concessionaire, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Section 28.1 (*Increase in Costs*) shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

Section 28.2 Reduction in costs

28.2.1 If as a result of Change in Law, the Concessionaire benefits from a reduction in costs or increase in net after-tax return or other financial gains, the aggregate financial effect of which exceeds the higher of PKR 10,000,000 (Pak Rupees Ten Million) in any Accounting Year, the GoS may so notify the Concessionaire and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the decreased costs, increase in return or other financial gains as aforesaid. Upon notice by the GoS, the Parties shall meet, as soon as reasonably practicable but no later than thirty (30) days from the date of notice, and either agree on such amendments to this Agreement or on any other mutually agreed arrangement: Provided that if no agreement is reached within one hundred and eighty (180) days of the aforesaid notice, the GoS may by notice require the Concessionaire to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within sixty (60) days of receipt of such notice, along with particulars thereof, the Concessionaire shall pay the amount specified therein to the GoS; provided that if the Concessionaire shall dispute such claim of the GoS, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Section 28.2 (*Reduction in Costs*) shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement. Independent Auditor – change of law notifications having an impact on the tax related incoming and outgoing funds

Section 28.3 Restriction on Cash Compensation



28.3.1 The Parties acknowledge and agree that the demand for cash compensation under this Article 28 (*Change in Law*) shall be restricted to the effect of Change in Law during the respective Accounting Year and shall be made at any time after commencement of such year, but no later than one year from the close of such Accounting Year. Any demand for cash compensation payable for and in respect of any subsequent Accounting Year shall be made after the commencement of the Accounting Year to which the demand pertains, but no later than one (1) year from the close of such Accounting Year.

Section 28.4 No Claim in the Event of Recovery from Users

28.4.1 Notwithstanding anything to the contrary contained in this Agreement, the GoS shall not in any manner be liable to reimburse to the Concessionaire any sums on account of a Change in Law if the same are recoverable from the Users.

ARTICLE 29 LIABILITY AND INDEMNITY

Section 29.1 General Indemnity

29.1.1 The Concessionaire will indemnify, defend, save and hold harmless the GoS and its officers, servants, agents, Government Agency and Government owned and/or controlled entities/enterprises, ("GoS Indemnified Persons") against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature, whether arising out of any breach by the Concessionaire of any of its obligations under this Agreement or any related agreement or on account of any defect or deficiency in the provision of services by the Concessionaire to any User or from any negligence of the Concessionaire under contract or tort or on any other ground whatsoever, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach or default of this Agreement on the part of the GoS Indemnified Persons.

29.1.2 The GoS will indemnify, defend, save and hold harmless the Concessionaire against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature arising out of (i) defect in title and/or the rights of the GoS in the land comprised in the Site, and/or (ii) breach by the GoS of any of its obligations under this Agreement or any related agreement, which materially and adversely affect the performance by the Concessionaire of its obligations under this Agreement, save and except that where any such claim, suit, proceeding, action, and/or demand has arisen due to a negligent act or omission, or breach of any of its obligations under any provision of this Agreement or any related agreement and/or breach of its statutory duty on the part of the Concessionaire, its subsidiaries, affiliates, contractors, servants or agents, the same shall be the liability of the Concessionaire.

Section 29.2 Indemnity by the Concessionaire



29.2.1 Without limiting the generality of Article 30 (*Dispute Resolution*), the Concessionaire shall fully indemnify, hold harmless and defend the GoS and the GoS Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to but not limited to the following:

- (a) failure of the Concessionaire to comply with Applicable Laws and Applicable Permits;
- (b) payment of taxes required to be made by the Concessionaire in respect of the income or other taxes of the Concessionaire's contractors, suppliers and representatives; or
- (c) non-payment of amounts due as a result of materials or services furnished to the Concessionaire or any of its Contractors which are payable by the Concessionaire or any of its Contractors.

Section 29.3 Notice and contest of claims

29.3.1 In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 29 (*Liability and Indemnity*) ("**Indemnified Party**") it shall notify the other Party ("**Indemnifying Party**") within thirty (30) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

Section 29.4 Defense of claims

29.4.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 29 (*Liability and Indemnity*), the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as



shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.

29.4.2 If the Indemnifying Party has exercised its rights under Section 29.3 (*Notice and Contest of Claims*), the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

29.4.3 If the Indemnifying Party exercises its rights under Section 29.3 (*Notice and Contest of Claims*), the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:

- (a) the employment of counsel by such party has been authorised in writing by the Indemnifying Party; or
- (b) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defense of such action; or
- (c) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defense of such action and shall have been so notified by the Indemnified Party; or
- (d) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:
- (e) that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or
- (f) that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement.

Provided that if sub-section 29.4.3, (b), (c) or (d) of Section 29.4 (*Defense of Claims*) shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defense of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

Section 29.5 No Consequential Claims

29.5.1 Notwithstanding anything to the contrary contained in this Article 31, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

Section 29.6 Survival on Termination



- 29.6.1 The provisions of this Article 29 (*Liability and Indemnity*) shall survive Termination. GOS indemnities shall last for a period of 2 years and Concessionaires for a period of 5 years

ARTICLE 30 DISPUTE RESOLUTION

Section 30.1 Dispute resolution

- 30.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party ("**Dispute**") shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Section 30.2 (*Conciliation*).
- 30.1.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

Section 30.2 Conciliation

- 30.2.1 In the event of any Dispute between the Parties, either Party may call upon the Independent Engineer to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Independent Engineer and / or the Independent Auditor as the case may be, either Party may require such Dispute to be referred to the Secretary of the GoS and the Chairman of the Board of Directors of the Concessionaire for amicable settlement, and upon such reference, the said persons shall meet no later than fifteen (15) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the fifteen (15) day period or the Dispute is not amicably settled within thirty (30) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within one hundred and eighty (180) days of the notice in writing referred to in Section 30.1 (*Dispute Resolution*) or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Section 30.3 (*Arbitration*).

Section 30.3 Arbitration

- 30.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Section 30.2 (*Conciliation*), shall be finally decided by reference to arbitration by a Board of Arbitrators appointed in accordance with subsection 30.3.3 of this Section 30.3 (*Arbitration*). Such arbitration shall be held in accordance with the provisions of the Arbitration Act.
- 30.3.2 The venue of such arbitration shall be Karachi, and the language of arbitration proceedings shall be English.



- 30.3.3 There shall be a Board of three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two (2) arbitrators so selected, and in the event of disagreement between the two (2) arbitrators, the appointment shall be made in accordance with the Rules and in the event the two (2) arbitrators are unable to agree on the third arbitrator than the same will be appointed in accordance with the Arbitration Act
- 30.3.4 The arbitrators shall make a reasoned award ("**Award**"). Any Award made in any arbitration held pursuant to this Article 30 (*Dispute Resolution*) shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the GoS agree and undertake to carry out such Award without delay.
- 30.3.5 The Concessionaire and the GoS agree that an Award may be enforced against the Concessionaire and/or the GoS, as the case may be, and their respective assets wherever situated.
- 30.3.6 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

ARTICLE 31 MISCELLANEOUS

Section 31.1 Governing Law and Jurisdiction

- 31.1.1 This Agreement shall be construed and interpreted in accordance with and governed by the laws of Pakistan and the Courts of appropriate jurisdiction in the Province of Sindh shall have the exclusive jurisdiction over all matters arising out of or relating to this Agreement.
- 31.1.2 The regulation, rights and responsibilities of the GoS as specified in the Sindh Highway Act 1959 shall continue to be in force in respect of the Project except in so far as they are removed or amended, explicitly or implicitly, by this Agreement which in all respects shall take precedence.

Section 31.2 Waiver

- 31.2.1 Waiver by either Party of any default by the other Party in the observance and performance of any provision of or obligations or under this Agreement:
- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions or obligations under this Agreement;
 - (b) shall not be effective unless it is in writing and executed by a duly authorised representative of such Party; and
 - (c) shall not affect the validity or enforceability of this Agreement in any manner.



31.2.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

Section 31.3 Survival

31.3.1 Termination of this Agreement (a) shall not relieve the Concessionaire or the GoS of any obligations hereunder which expressly or by implication survives Termination hereof, and (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.

Section 31.4 Amendments

31.4.1 This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the Agreement between the Parties on the subject hereof and no amendment or modification hereto shall be valid and effective unless agreed to by all the Parties hereto and evidenced in writing.

Section 31.5 Notices

31.5.1 Unless otherwise stated, notices to be given under this Agreement including but not limited to a notice of waiver of any term, breach of any term of this Agreement and termination of this Agreement, shall be in writing and shall be given by hand delivery, recognized international courier, mail, telex or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set forth below in Schedule X (*Details for Notices*) or such address, telex number, or facsimile number as may be duly notified by the respective Parties from time to time, and shall be deemed to have been made or delivered (i) in the case of any communication made by letter, when delivered by hand, by recognized international courier or by mail (registered, return receipt requested) at that address and (ii) in the case of any communication made by telex or facsimile, when transmitted properly addressed to such telex number or facsimile number.

Section 31.6 Severability

31.6.1 If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing upon one or



more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable. Provided failure to agree upon any such provisions shall not be subject to dispute resolution under this Agreement or otherwise.

Section 31.7 No Partnership

31.7.1 Nothing contained in this Agreement shall be construed or interpreted as constituting a partnership between the Parties. Neither Party shall have any authority to bind the other in any manner whatsoever.

Section 31.8 Language

31.8.1 All notices required to be given under this Agreement and all communications, documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language.

Section 31.9 Exclusion of Implied Warranties

31.9.1 This Agreement expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement between the Parties or any representation by any Party not contained in a binding legal agreement executed by the Parties.

Section 31.10 Counterparts

31.10.1 This Agreement may be executed in two counterparts, each of which when executed and delivered shall constitute an original of this Agreement.



Schedule A Scope of the Project

DETAILED PROJECT SCOPE

Terms of Reference to achieve overall objective of this project are as follows:

1. Detailed Design of Project
 - a) Carry out map/ satellite picture study supplemented with area reconnaissance and study number of options for bridge location with approach roads of the bridge and present all options with merits and demerits after ground assessment of salient features of each location.
 - b) The developer shall recommend in inception report, most suitable option for approval from IE / Client.
 - c) Carryout hydrological studies also taking into consideration river flow patterns during peak flood and recession period.
 - d) Frame Terms of Reference for Hydraulic Model Study for bridge, approaches and guide banks/protection works and coordinate with Irrigation Research Institute for conduct of model study. Concessionaire shall also be responsible for carrying out riverine area survey.
 - e) Carry out fresh soil investigations for bridge and approach roads.
 - f) Detailed designing of the project based on conceptual designs (x-section of bridge and approach road provided). The Concessionaire will be responsible for all aspects of Design in conformity with applicable standards and in accordance with the Concession Agreement, including the Design requirements as set out in Article 12 and Schedule J of the Concession Agreement.
 - g) Detailed reconnaissance of project and review of all material / documents provided.
 - h) Carryout topographic survey for the selected bridge location and approach road, soil investigation survey to determine Subsoil Condition, other required soil tests and analysis for the authenticity of any available report as the Client will not be liable to any discrepancy.
 - i) Detailed Geometric design as per the geometric Design criteria for roads given in the AASHTO standards. Also carry out pavement design, design of retaining/ protection works, design of erosion protection works and drainage works.
 - j) Carry out Bridge Structural Design in accordance with provisions of AASHTO LRFD Bridge Design Specifications.
 - k) Design of other minor structures and intersections (at-grade or grade separated)
 - l) Carryout environmental impact assessment of the project.
 - m) Prepare construction drawings
 - n) Preparation of land acquisition and utility/ infrastructures folders.
 - o) Carry-out EIA Report on the recommendation of IEE and to seek approval from EPA as per their rules and regulations. (Land acquisition and clearance of encroachment will be the responsibility of the GoS)
 - p) Carry-out Detailed Design of Toll gates, Rest areas, weigh bridges, offices and residency of operation and maintenance staff.
 - q) Give detailed plan of implementation strategy.
 - r) A summary of the design criteria is being provided to the Short-listed Bidders, however, to promote innovation, Bidders are encouraged to develop Proposals that differ or vary from the Reference Design and that comply with the requirements of the Concession Agreement. The general performance requirements for the Road and Bridge are given below:

GEOMETRIC DESIGN CRITERIA

Design life	
Bridges and structures	50 years
Pavement structures	10 years
Design speed (Max)	
Flat terrain rural	100 km/h
Flat terrain Town	60 km/h
Maximum super elevation	4.0%
Transverse slope (Camber)	
Pavement	2.0%
Shoulders	4.0%
Gradient (Min)	0.20%



Shoulder width either side	3.00 m
Outer shoulder treatment	Double Surface Treatment
Embankment height	Varies
Embankment side slope	
Fill	1:2 to 1:3
For Approach Road	
Design Speed:	
Rural	100 km/hr
Town	60 km/hr
Pavement Design Life	10 Years
Maximum Super-elevation	4%
Gradient:	
Maximum	3%
Minimum	0.2%
Transverse Slope:	
Carriageway	2% (crown)
Shoulder	4%
Carriageway Width	7.3 meters
Shoulder Width (both sides)	3.0 meters
Shoulder Surfacing	Double Surface Treatment (DST)
Side Slope	2H:1V to 3H:1V
Pavement Maintenance	Governed by IRR Test and pavement Residual Strength as per AASHTO Standard
For Bridge	
Design Life	50 Years
Width	(See Cross Section attached)
Live Load	Class AA Loading

For Material and Testing:

ASTM -American Society for Testing and Materials

AASHTO-American Association of State Highway and Transportation Officials.

For Structures:

AASHTO LRFD (Latest Edition) American Association of State Highway and Transportation Officials.

Loading:

West Pakistan Code of Practice for Highway Bridges 1967.

Seismic Design:

AASHTO analysis and design with latest Seismic zoning map for Pakistan as per revised current GoP Seismic parameters.

Other design criteria not specified herein shall be approved by the IE/Client before being adopted for the design.

Structural Design:

For bridge locations, drawing scale of 1:500 shall be used showing the main features of the structure proposed, the centreline of the proposed carriageway, the topography of the adjoining terrain and the benchmarks, The final design plans shall include all details in appropriate scale necessary to construct the said structures. The choice of structure and specifications will be determined keeping in view the economy, aesthetics of material

2. Construction of the Bridge, Approach Road and Ancillaries



- a) The Concessionaire will be responsible for all aspects of Construction in conformity with AASHTO Standards and in accordance with the Concession Agreement, including the Construction requirements as set out in Article 13 and Schedule I (Construction Requirements) of the Concession Agreement.
 - b) During construction, the Concessionaire will be required to comply with the traffic management requirements set out in the Concession Agreement to minimize the impact of construction on other roads and provide certainty for road users.
 - c) As stated in the Concession Agreement, the Private Partner must plan the Final Completion Date no later than 24 months after the Financial Close.
 - d) All cost overruns and delays in completing the work are the responsibility of the Private Partner.
3. The Concessionaire shall need to:
- a) Construct the Project within estimated time.
 - b) Carryout Quality Control tests as per AASHTO recommendations (See Schedule I) (Construction Requirements) of the Concession Agreement as per AASHTO and ASTM references). Records of tests will be signed off by in Independent Engineer.
 - c) Submit Construction Program of the Project.
 - d) Submit Road Safety plan and issues and diversion plan during construction to obtain control of traffic and minimum hindrance to traffic and make proper liaison with Police and Civil authorities before chart of west.
 - e) Developer should provide Independent supervision officer and facilitates their offices and inspection vehicles.
 - f) Construction material will be used from approved sources with appropriate tests certification.
 - g) Developer has to make sure that the site be clean from any debris, construction material and machinery from site during operation phase.
 - h) International and local safety standards and best practice procedure should be followed during construction phase.
 - i) The developer has to submit As-built drawing at completion of work.
 - j) Extra block of measurements will be verified by the Independent Engineer.
 - k) Project sign board will be placed in English and Urdu for the safety of commuters.



Schedule B Project Completion Schedule

The Project milestones are given in the following chart:

Pre-bid Conference	30 th Dec 2011
Submission of Proposal	31 st Jan 2012
Concession Agreement signing	28 th Feb 2012
Financial Close	30 th Jun 2012
Concession period	
Anticipated start of design	01 st Mar 2012
Anticipated end of design	30 th Jun 2012
Anticipated start of construction	01 st Jul 2012
Anticipated end of construction	30 th Jun 2014
Anticipated expiry of Concession Agreement & handover of facilities	30 th Jun 2039



Schedule C Project Facilities

A) Temporary Water Supply

Where owner's water tank and pumps are temporarily removed a supply to the property must be maintained by the developer.

B) Engineer's Facility

The Developer shall provide furnished, equip and maintain site office for the engineer. Office provided shall be maintained by the developer; all times during the duration of the contract period including period if any.

C) Laboratory Facilities with Testing Equipment

The Developer shall furnish the laboratory testing facility with testing equipment, services, supplies, attendants, furniture and its running maintenance cost for the tests to be conducted.

The Developer shall also furnish the laboratory with a vehicle with driver to be approved by the Independent Engineer for the sole use of the laboratory to transport testing equipments, testing samples and laboratory technicians, for carrying out inspection and testing on site throughout the same period.

The tests shall be executed according to AASHTO, ASTM an BS Standards and all required equipments for facilitation of the tests should be furnished in the lab with two sets of latest editions of prescribes standards (one to be placed in the laboratory and other for the Independent Engineer.

D) Temporary road, traffic management and control, general protection

Layout plans showing the detailed proposals of temporary diversions to be carried out by the Developer shall be submitted to IE/GoS and to concerned district police and civil agencies for their written approval 10 days before the implantation date.

Diversion must be constructed in advance of any interference with in the existing carriageway and shall be maintained in accordance to traffic load in condition satisfactory to engineer.

E) Location of Utility Services

Location and identification of all services, in consultation with relevant Utility service provider(s), whether above ground or below the ground shall be Contractor's responsibility following transfer of that utility by GoS and provide the right of way to the Concessionaire, free from any encumbrances.



Schedule D Cashflow Projections

To be incorporated later



Schedule E Concession Permits

PART A

LIST OF INITIAL CONCESSION PERMITS

1. Works & Services Department, Govt. of Sindh
2. PPP Policy Board, Govt. of Sindh

PART B

LIST OF OUTSTANDING CONCESSION PERMITS

1. Environmental Protection Agency.
2. Water & Power Development Authority, Govt: of Pakistan
3. Sui Southern Gas Company Limited
4. Pakistan Telecommunication Authority
5. Oil & Gas Development Corporation.



Schedule F GoS Permits

LIST OF GOS PERMITS

1. Forest Department, Government of Sindh.
2. Irrigation Department, Government of Sindh.
3. Mosques, Imam Barghas, Places of Religious Affairs, Government of Sindh.
4. Graveyards through Ministry of Municipalities and Rural Affairs, Government of Sindh.



Schedule G Corporate Documents

1. The certified copies of the memorandum and Articles of Association of the Concessionaire;
2. Board Resolution duly passed by the Board of Directors of the Concessionaire resolving that the Concessionaire may undertake the Project and stating the name of the authorized signatory of the Concessionaire who shall sign this Agreement and all other necessary documents in favor of the GoS for and on behalf of the Concessionaire; and
3. Any other documents which the GoS may require.



Schedule H Design Requirements

1.0 RECONNAISSANCE SURVEY:

Subsequent to Desk study including satellite imagery; a reconnaissance survey of the area shall be carried out to identify the most suitable and viable Bridge location and approaches. Terrain type soil conditions, River flow conditions, length and geometry of approaches and other important features related to specific site conditions shall be considered for selection of most viable Bridge alignment and approaches.

2.0 RIVERINE SURVEY

The Concessionaire shall carry out Riverine survey of about 15 km of whole width of River Indus covering the following requirements. The extent of the riverine survey will be 15 km upstream and 6 km downstream from the proposed centre line of the Bridge. The limits will be adjusted to the local site condition where found necessary.

Cross section of river at ever 300 meters will be taken by the Concessionaire.

Longitudinal section of the river shall also be provided showing the bed slope.

The lines showing the location of cross sections and longitudinal sections shall be indicated of survey plans.

Location of the x-sections shall be marked on the site plan.

3.0 TOPOGRAPHIC SURVEY:

Topographic survey for design of approach roads on either side of the bridge in relation with the proposed alignment of the bridge shall be carried out through EDM Tachy method using Total Station. Field survey data shall be computer processed and computer aided mapping shall be carried out. This data shall be AutoCAD compatible for use on Road Calc and other Highway design software.

Detailed topographic survey shall be carried out (length of survey to be adjusted as per actual) with in 100 meter corridor or as required by site conditions.

Cross-sections for approaches shall be taken along the proposed centre line of approaches at about 50 meter interval or will be adjusted to the local site condition. Location of the Cross-sections shall be marked on the site plan.



Longitudinal section of approaches shall also be provided.

An index Map (Alignment Plan) Scale 1:50,000 showing the proposed location of the bridges, approaches and the existing communications, the general topography of the area and important towns etc. in the vicinity.

A contour survey plan of area showing all topographical features to give a clear indication of the topographical and other features that might influence the location and design of bridge and its approaches.

The detailed topographic survey and traverse will be cross-referenced to Survey of Pakistan (SOP) Triangulation Stations for coordinates, bearings, levels, etc. Well-protected temporary survey monuments shall be fixed. Subsequently these shall be converted into / replaced by permanent BMs/ Centreline Markers.

All survey coordinates and bearings will be referred to adjacent SOP triangulation stations by closed traverse, if available.

The extent of the survey shall be adjusted according to the local site conditions. The survey will be carried out in sufficient detail to be utilized for Hydraulic Study and preparation of detailed design and estimation of quantities.

4.0 PROVISION OF DATA FOR MODEL STUDIES:

After completion of survey work, the Concessionaire shall provide riverine survey data, topographic survey data and other relevant site information required by the Irrigation Research Institute to Client for detailed model study. The data shall be furnished to Client in hard as well as soft form.

5.0 MONUMENTATION FOR APPROACH ROADS:

Permanent concrete monuments as given on Plate No. I shall be established at site. Detailed description sheet as given on Plate No.2 shall be prepared in respect of each of the permanent survey control station. It shall contain free-hand sketch of the station location and description of the mark including final adjusted elevation value and coordinates.

a) Vertical Control:

This shall be through levelling and check levelling method using automatic levelling instruments and levelling staves of good quality. The minimum acceptable accuracy standard for levelling & check levelling shall be $\pm 12\text{mm}$ where K is distance in kilometers.



b) Horizontal Control:

This shall be established through EDM traversing in closed loop form. The traversing closure shall be 1 :12,000 or better. All traverse distances shall be measured two ways (forward and back) and the two values shall agree to 1:10,000 or better. All horizontal angles shall be measured on two zeros (four pointing) each way and mean accepted provided the spread is within 20sec. of arc. The traverse shall be computed and mis-closure adjusted to obtain final adjusted values.

Similarly centreline of bridge shall be fixed on both sides of the river by permanent concrete monument as Plate No. 1.

6.0 SOIL INVESTIGATION:

6.1 General

Sub-surface investigations consisting of boreholes/ drill-holes of required depth, supplemented by field and laboratory testing to accurately assess the engineering properties of the underlying soil strata for detailed design of foundations, substructures and roads shall be undertaken. A separate report will be prepared to this effect and will be submitted to Client for approval. Original laboratory reports shall be attached in the soil report alongwith coloured photographs.

6.2 Scope of Work:

Geotechnical investigations shall comprise of

- 1) Soil survey from 30 Number pits along the alignment of approaches
- 2) Soil Investigations, 12 Number boreholes 60 meter deep, for main bridge over River Indus.
- 3) Soil Investigations 2 Number borehole 30 meter deep for each canal bridge.

6.3 Methodology:

Borelogs shall be included in the Soil Investigation Report alongwith the laboratory results. Testing of samples collected from site shall be carried out in a reputed laboratory, under strict quality control and adherence to relevant ASTM procedures/ standards. Standard penetration tests shall be started from the ground surface and carried out in accordance with ASTM D1586 Penetration Test and Split Barrel sampling of soils.



Where clays are encountered, undisturbed samples shall be obtained in accordance with ASTM on thin tube sampling of soils, Where cohesion less strata is encountered, disturbed samples shall be obtained at every change of strata.

If rock is encountered, then drilling in lock shall be carried out and cores shall be drilled at regular intervals of 2m. If rock is encountered at tip of bore hole, then drilling in rock shall continue for 5m below the tip level of the bore .the samples obtained tested for compressive strength of the rock employing unconfined compression test.

Following laboratory tests (requirements and frequency of test to be decided by the Designer) shall be conducted.

All Samples:

- Grain size analysis (Sieve and Hydrometer) / Soil Classification.
- Atterberg Limits
- Moisture content.
- Density
- Socked 3-point CBR at NSL

Undisturbed Cohesion less Samples.

- Direct Shear Test

Undisturbed Cohesive Samples.

- Unconfined Compression test
- Consolidation test (for clays)

Rock Cores.

- Unconfined Compression test

Triaxial Compression test

- Three(03) samples from each borehole shall be tested.

6.4 Information Required;

Based on the results of the above tests, following information shall be furnished:.

- 1) Cohesion of soil
- 2) Angle of Internal Friction



- 3) Bearing Capacity Factors
- 4) Coefficient of the volume compressibility of clays
- 5) Compression Index
- 6) Density and specific gravity of soil.
- 7) Modulus of subgrade reaction of soil
- 8) Modulus of elasticity of soil

7.0 MATERIAL, SURVEY AND TESTING:

Concessionaire shall carry out the survey and testing of the construction materials for structures. Location of the quarries and water resources shall be properly marked on the sheets. Materials and water samples will be tested for conformance to standard such as Los Angeles Abrasion test, specification. Soundness Test, Physio-chemical for Analysis, etc. testing and aggregates undesirable reactive shall also be done. A report covering naturally occurring construction materials such as aggregates, sands, etc., as well as the manufactured material such as cement, reinforcing steel, bitumen, etc. shall be including the report.

Review the suitability of locally available construction materials, and if necessary, locate new quarries and borrow pits and assess the quality and quantity of materials and hauling distance.

8.0 GEOTECHNICAL INVESTIGATION REPORT:

Geotechnical report including all field investigation bore logs, location of Ground Water Table, location of boreholes / drill-holes and test pits shall be prepared. Geotechnical investigation report shall provide results of laboratory testing along with the recommendations for the type of foundations and pavement.

9.0 HYDROLOGY AND HYDRAULIC STUDY:

Concessionaire shall carry out detailed Hydraulic Study for peak, medium and low discharge behavior for design of Guide banks and erosion protection works. Complete Hydraulic report will be prepared by the Consultant justifying:

Waterway, Maximum Peak Discharge, High Water Levels, Scour Estimates, Type of Bed Material, Maximum Velocity, Clearance, Structure Profile, Protection Works etc.

10.0 INCEPTION REPORT:

- a. After carrying site reconnaissance in and desk study the Concessionaire the inception report shall submit all possible options with merits and demerits of various bridge locations plus the alignment of approach roads and other



likely bottlenecks for example level crossings, other road crossing, intersections, populated areas etc. Concessionaire shall also recommend most suitable option giving proper justification/ reasons as per their judgment for approval by Independent Engineer.

- b. Inception report shall also cover in formation of traffic data and main hydraulic design parameters to be adopted for detailed design for approval by Independent Engineer.
- c. The Concessionaire shall submit report marking all the options on the SOP maps. The Concessionaire will be required to give presentation to Independent Engineer for approval of bridge location site and alignment of approach roads.
- d. The work on bridged signs hall be undertaken after approval of the inception report.

11.0 DESIGN STANDARDS AND CRITERIA:

Design Standards:

The following Design Standards would be followed:

For Material and Testing:

ASTM -American Society for Testing and Materials

AASHTO-American Association of State Highway and Transportation Officials.

For Structures:

AASHTO LRFD (Latest Edition) American Association of State Highway and Transportation Officials.

Loading:

West Pakistan Code of Practice for Highway Bridges 1967.

Seismic Design:

AASHTO analysis and design with latest Seismic zoning map for

Pakistan as per revised current GoP Seismic parameters.

Other design criteria not specified herein shall be approved by the Independent Engineer before being adopted for the design.

Structural Design:



For bridge locations, drawing scale of 1:500 shall be used showing the main features of the structure proposed, the centreline of the proposed carriageway, the topography of the adjoining terrain and the benchmarks, The final design plans shall include all details in appropriate scale necessary to construct the said structures. The choice of structure and specifications will be determined keeping in view the economy, aesthetics of material



12.0 GEOMETRIC DESIGN

Geometric design shall be based on the following criteria:

S.No.	Parameters	Unit	Plain Areas
a)	Design Road Rural Town	Km/h Km/h	100 60
b)	Number of Lanes	Number	02
c)	Formation Width	M	13.3
d)	Width of Travelled Way (Carriageway)	M	7.3
e)	Width of Shoulders 3.0m wide shoulders	M	3.0m each side
f)	Cross Slope i) Carriageway ii) Shoulder	%	2 4
g)	Maximum Gradient	%	3.0
h)	Other design criteria not specified herein shall be approved by Independent Engineer before being adopted for the design		

Parameters not specified above shall conform to AASHTO Highway Design Guide (Green Book), 2004 Edition.

13.0 EMBANKMENT DESIGN

In areas of high water table, filter cut-off layer shall be provided to protect the pavement structure. This should include day-lighting of the pavement layers to outer side of the embankment. Surface drainage should also be designed properly with defined disposal points with special consideration in the built-up area.

14.0 PAVEMENT DESIGN

Pavement design shall be done according to AASHTO Recommendations (latest edition) with load factors from NTRC Report and confirm the design with the mechanistic design methodology. The pavement design will be based on existing traffic keeping overload factors in view. The pavement shall have a design life of at least 10 years and should not require a major maintenance before ten years of commercial operations date and then again not require major maintenance before ten years of first major maintenance. Bidders should build the major maintenance expense into their annuity payment for that year; however, the payment for the major maintenance shall be made at the time of actual expense only after certification by the Independent Engineer and the Independent Auditor. Traffic



growth factor shall be established through the study of available traffic data. Recommendations of the Asphaltic Concrete Institute latest note shall be kept in view while designing. Only granular subbase with Zero Plasticity Index shall be used in the pavement structure.



15.0 BRIDGE STRUCTURE

Main bridge shall be designed as two lane (02) lane and each lane shall not be less than 3.65 meters wide. A walkway attached at the end, both sides), separated by the main carriageway (for animals crossing) shall be provided. Bridge deck shall be designed for minimum of 4,000 psi concrete depth not less than 225mm. Deck-Section of main river bridge and other minor bridges shall be as per Table-1.

Design of guide banks, river training works and other protection works shall also be based on sound engineering practice keeping in view afflux and scour depth considerations and duly substantiated with design calculations.

16.0 PROTECTION WORKS:

Protection works, will be designed for high flood discharge and flow pattern determined by design calculations and hydraulic study. Detail Drawings of the same will form part of Design report and Tender Package.

17.0 LAND ACQUISITION REQUIREMENTS

After final location and alignment survey, the consultants shall update land acquisition folders. Details of property falling within ROW shall be indicated. Details of land to be acquired for road construction shall also be updated. The Concessionaire shall submit ROW plans showing the alignment and total area to be acquired. ROW permanent markers shall be set up by the Concessionaire. The Concessionaire shall also prepare estimate for acquiring any additional land and removal of structures and utilities and prepare cost estimates for implication of removal.

18.0 HYDRAULIC MODEL STUDY

Concessionaire shall prepare detailed Terms of Reference for conducting hydraulic model study and carryout necessary coordination with Irrigation Research Institute. The Concessionaire shall also provide necessary riverine area survey and other hydraulic parameters to Irrigation Research Institute.

19.0 DESIGN REPORT

Concessionaire shall prepare a Design Report consisting of the final alignment, Design of Pavement and design of Structures bridges(culverts, underpasses, and retaining walls); containing all relevant tables, calculations, computer analysis(with proper explanation of the computer programs and analysis used in the calculations), interpretation of the computer results, conclusions, references etc, all compiled and complete with sketches relevant to the preparation of



construction drawings properly cross referenced between the drawings and the calculation sheets.



20.0 ENVIRONMENTAL IMPACT ASSESSMENT STUDY

It should include but not limited to the following:

- a. Review of legislation and legal framework
- b. Project features and analysis of various alternatives
- c. Identification of project's various impacts e.g. ecological, socio-economic etc.
- d. Impacts from the surrounding ongoing and proposed development, during planning, construction and on completion
- e. Impact identification, analysis and mitigation measures
- f. Preparation of detailed Environmental management mitigation plan during construction phase and on completion.
- g. Any other requirements of the statutory authorities as required for the approval of the study.
- h. Assisting Client in obtaining all NOCs from federal and provincial agencies.
- j. Quantification and costing of environmental management mitigation measures.

AASHTO® Guide for Design of Pavement Structures 1993



Schedule I Construction Requirements

As per AASHTO standards.



Schedule J O&M Requirements

O&M Manual will be prepared by Concessionaire and approved by Independent Engineer.



Schedule K Annuity Amount Payment Schedule

To be incorporated when financial model will be finalized.



Schedule L Annuity Amount Payment Adjustment Formula

To be incorporated when financial model will be finalized



Schedule M Independent Engineer Terms of Reference

1. General

The Independent Engineer-IE of the Project Highway shall, in principle be responsible for review of designs, drawings, construction, progress monitoring, and affirmation of all certification done by the Concessionaire.

The IE shall supervise that the requirement of the Concession Agreement and its various appendices, other than mentioned for Independent Auditor-IA of the Project Highway, are met by the Concessionaire and in case of any discrepancy / deviations, shall inform GoS and the Concessionaire. The responsibility of the IE during various phases of Design Review, Construction and Operation & Maintenance shall be but not limited to the following.

2. Design Review Phase

- (a) Review and approve the adequacy of topographical surveys, geo-technical and sub-soil investigations, hydrological investigation for the road, bridge and other structures.
- (b) Review and approve the Condition Survey of existing Bridges, Culverts and other structures conducted by Borrower / Concessionaire to establish the structure adequacy, and proposed strengthening for the Project Highway.
- (c) Review and approve the design and working drawings prepared and submitted by Borrower / Concessionaire to the Independent Engineer for the construction of various components of the road, bridges / structures, estimates reports and other deliverables with regard to:
 - (i) Adequacy, completeness, optimality and capability of design to perform as required in anticipated operating conditions and to meet the technical requirements specified in the Concession Agreement.
 - (ii) Identification of project design features or any major equipment component that does not appear to meet design, performance requirements or fails to adhere to good engineer practice.
 - (iii) Provide an opinion on the quality of the design with respect to their effect on the anticipated service life of the facility, the degree of maintenance needed to meet performance requirements and long term availability over the term of the concession.
- (d) Review and approve reports prepared and submitted by the Concessionaire, with respect to the traffic, traffic management etc.
- (e) Review and approve the implementation schedule of engineering, design, procurement and construction of the project submitted by the Borrower / Concessionaire and determine that adequate provisions have been made for the following:
 - (i) Design
 - (ii) Raw material sourcing.



- (iii) Raw material processing equipment
 - (iv) Utilities
 - (v) Other Equipment procurement
 - (vi) Construction
 - (vii) Testing
- (f) Review and approve the capability of the proposed toll collection system to perform as required in anticipated operating conditions.
- (g) Review and approve the Operation and Maintenance during the Concession Period.
- (h) Review and comment on the consistency of all project documents.
- (i) Review the available permits or permit applications.
- (j) Review the environmental management plan for the Project Road during Construction (and O&M phases if required)
- (k) Review and comment on the utilities arrangement for the project, including, but not limited to the water supply and electricity supply.
- (l) Review and approve the adequacy and reasonableness of the project co-ordination and monitoring systems.
- (m) Review quality assurance and quality control provisions during the design, and construction and O&M phase.
- (i) IE is required to prove due diligence and utmost expertise in ensuring that quality control provisions are maintained at all times during construction and O&M Phase.
 - (ii) IE Will be responsible to report lender in case the quality standards and quality control provisions are not maintained on the project site.
- (n) Audit the safety of the Project Highway during Construction and Operation & Maintenance phase.

3. Role of IE during Construction Phase

- (a) The duties of the IE are to supervise the works on random sample basis and to approve the materials and workmanship of the works. AS stated in the Concession Agreement, IE shall have no authority to relieve the Concessionaire of any of its duties or to impose additional obligations.
- (b) The IE shall review and approve works program prepared and submitted by the developer.
- (c) The IE shall review the material testing results and mix designs and to order special tests of materials and / or completed works, and / or order removal and substitution of substandard material and / or work as required.
- (d) The IE shall review quality assurance and quality control during construction period.



- (e) The IE shall ensure that the construction work is accomplished in accordance with the Specification and Standards.
- (f) The IE shall identify construction delays, if any and recommend to the Lender the remedial measures to expedite the progress.
- (g) Review the "As Built" drawings for each component of the Project Works prepared and submitted to IE by the Borrower / Concessionaire.
- (h) Review the safety measures provided for the traffic and Project workers.
- (i) Determine any extension of the Project Completion Schedule, to which the Concessionaire is entitled and shall notify Lender, accordingly.
- (j) Review compliance by the Concessionaire of its obligations under the Concession Agreement.
- (k) Issue Completion Certificate after checking the results of prescribed test.
- (l) Issue Provisional Certificate duly appended with a list of outstanding item (Project Completion Check List) established after joint inspection with the Concessionaire if the Concessionaire requests for it.
- (m) For performance testing, the IE will
 - (i) Review test procedures developed by Concessionaire appointed Maintenance Contractor and confirm compliance with applicable test codes and standards and with testing criteria specified in Concession Agreement and its appendices.
 - (ii) Review the quality control reports, material testing results and Mix Design and to order special tests of materials and / or completed works, and / or order removal and substitution of substandard materials and / or works as required.
 - (iii) Review test reports prepared by Concessionaire or Concessionaire's testing consultant.
 - (iv) Monitor successful completion of each Project Completion Check List item. Make one final visit to Project site to verify that Project Completion Check List items have been completed and thereafter sign and submit the Project Completion Certificate.

4. Role of IE during Operation & Maintenance Phase

- (a) Review and approve work plan and schedules of various operation and maintenance activities.
- (b) Review and approve the O&M manual(s) prepared by the Concessionaire for their completeness and compatibility with those of similar facilities.



- (c) Review and approved the performance of O&M activities including equipment, service, traffic, operation and safety, toll plazas and fees collection.
- (d) Recommend necessary actions to Lender to undertake maintenance obligations of the Concessionaire at risk and cost of the Borrower / Concessionaire in the event of his failure to carry out O&M.
- (e) Undertake audit of the traffic using the Project Road at reasonable times.
- (f) Review and inspect the Project Road at all reasonable times and upon reasonable notice to the Borrower / Concessionaire during the O&M period and issue an Inspection Report of such inspections to lender.
- (g) Review the accident record, prepared and submitted by Concessionaire, on the Project Road and suggest remedial measures at reasonable intervals.

5. The Other functions of the IE Shall be the following.

- (a) Perform functions, including issue of directions to the Borrower / Concessionaire, in respect of the Emergency, De-commissioning of the Project facility as provide in the Concession Agreement.
- (b) Verify and ascertain evidence of insurance cover as provide in the Concession Agreement.
- (c) Perform functions in respect of change of Scope as provided in the Concession Agreement.
- (d) Inspect the Project facility including Project Assets and the Project Highway at the time of handing over thereof by the Borrower / Concessionaire to the Lender / GoS and perform functions in respect to such handing over as provided in the Concession Agreement.



Schedule N Drawings

Detailed engineering survey and design will be prepared by the Concessionaire.



Schedule O Financial Model

To be provided by the Concessionaire at proposal stage



Schedule P Form of Performance Security for Construction

Guarantee No:
Date of Issue
Date of Expiry
Guarantee Amount

Government of Sindh

PERFORMANCE GUARANTEE

GOVERNMENT OF SINDH

NAME OF GUARANTOR

NAME OF PRINCIPAL

PENAL SUM OF SECURITY

CONCERN AGREEMENT

KNOW ALL MEN BY THESE PRESENTS, that in pursuance of the terms of the Bidding Documents / Concession Agreement and above said Concession Agreement (hereinafter called the documents) and at the request of the said Principal we, the Guarantor above named, are held and firmly bound unto the (hereinafter called the Employer) in the penal sum of the amount sated above for the payment of which sum well and truly to be made to the said Employer, we bind ourselves, our heirs executors, administrators and successors, jointly and severally, firmly by these present.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal has accepted the Employer's above said Concession Agreement for the construction, improvement upgrading, widening, repair and maintenance of a Bridge linking the National Highway to Tando Muhammad Khan over the river Indus (herein after referred to as the "Project") which is to be carried out as a Public Private Partnership between the Government of Sindh and the Concessionaire for the Jhirk Mulla Katiar Bridge Project

NOW THEREFORE, if the principal shall well and truly perform and fulfill all the undertakings covenants, terms and conditions of the said Documents during the original terms of the said Documents and any extensions thereof that may be granted by the Employer, with or without notice to the Guarantor, which notice is hereby waived and shall also well and truly perform and fulfill all the undertakings, covenants terms and conditions of the Contract and of any and all modifications of said Documents that may hereafter be made, notice of which modifications to the Guarantor being waived then, this obligation to be void; otherwise to remain in full force and virtue till all requirements of clause related to defect liability of conditions of contract are fulfilled.

Our total liability under this Guarantee is limited to the sum stated above and its is a condition of any liability attaching to us under this Guarantee that the claim for payment in writing shall be received by us within the validity period of this Guarantee, failing which we shall be discharged for our liability, if any under this Guarantee.



We..... (the Guarantor), waiving all objections and defenses under the contract / Concession Agreement, do hereby irrevocably and independently guarantee to pay the employer without delay upon the Employer's first written demand without cavil or arguments and without requiring the Employer to prove or to show grounds or reason for such demand any sum or sums up to the amount stated above against the Employer's written declaration that the Principal Has refused for failed ot perform the obligations under the Contract/Concession Agreement which payment will be effected by the Guarantor to Employer's designated Bank & Account Number.

PROVIDED ALSO THAT the Employer shall be the sole and final judge for deciding whether the Principal..... Has dully performed his obligations under the Contract / Concession Agreement or has defaulted in fulfilling said obligations and the Guarantor shall pay without objection any sum or sums up to the amount stated above upon first written demand from the Employer forthwith and without any reference to the Principal of any other person.

IN WITNESS WHEREOF, the above - bounden Guarantor has executed this instrument under its seal on the date indicated above, the name and corporate seal of the Guarantor being affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.



Schedule Q Form of Performance Security O&M

To,

Project Manager
Jhirk Mulla Katiar Bridge Project
Government of Sindh

Whereas WORKS AND SERVICES DEPARTMENT, GOVERNMENT OF SINDH, having its offices at 3rd Floor, Sindh Secretariat, Karachi acting through Secretary to Government of Sindh, Works and Services Department (hereinafter referred to as the "GOS") which impression includes its successors, assignees and transferees, has floated an RFP for inviting proposals from the competent and eligible Engineering / Construction firms for construction of Jhirk Mulla Katiar Project in Public Private Partnership mode.

AND

Whereas a body corporate constituted under Companies ordinance 1984 having its registered office at which impressions includes its successors, assignees or transferees, hereinafter called "developer" has responded to RFP by submitting a formal proposal as per the requirement dully detailed in the RFP

AND

WHEREAS one of the material conditions, in the RFP was to provide Bid Security or for PKR in the form of Financial Guarantee of any scheduled Bank along with the proposal responding to the RFP.

AND

Where the said Developer has applied 7 requested us Hereinafter called "Guarantor" or Guarantor Bank" to provide bid security by way of Financial Bank Guarantee or Bid Guarantee to the GoS in compliance with the terms of the RFP or Tender

We the Guarantor Bank at the request of the "Developer" and in consideration of the Developer's proposal to the GoS, do hereby irrevocably and unconditionally declare, agree and execute this guarantee whereby the we shall be bound, obliged and liable to pay the GoS Rs..... and we further undertake and agree to make the payment of the said amount of Rs..... forthwith on the written demand from the GoS, without (i) assigning or insisting for any proof, evidence or document in support of the demand, (ii) requiring the GoS to provide any further documents (iii) raising any dispute whatsoever, (iv) going into the question of validity, propriety or legality of the said demand or (v) requiring the GoS to invoke any legal remedy that maybe available to it, provided any one of the following condition do occur.

1. The Developer has withdrawn its bid during its validity period as duly specified in the Tender / RFP.
2. The Developer fails or refuses to execute formal contract/s after its proposal is accepted by the GoS and such acceptance is duly conveyed to it.
3. The Developer fails or refuses to provide Performance Guarantee or Security in terms of the Tender / RFP after is proposal is duly accepted.



4. Failure of the developer to submit "Performance Security Bond" in shape of bank guarantee or failure to meet the Conditions Precedents shall also cause the forfeiture of this bank guarantee.

Notwithstanding anything contained hereinabove:-

1. Our financial liability or obligation under the Guarantee shall not exceed Rs.....
2. The Bank Guarantee shall be valid upto one year starting from the date of issue.
3. We shall be liable to pay the sum assured or any part of it under the Guarantee only and only if the GoS invokes this guarantee and written claim or demand for the guaranteed amount is served upon us on or before
4. The material or essential condition of the guarantee is that we shall pay the amount assured under this guarantee unconditional written demand from the GoS on happening of any of the aforesaid conditions.
5. This Guarantee shall not be prejudiced or affected by changes in the constitution of the Guarantor howsoever arising and the Guarantor and its successors shall continue to be liable in terms hereof.
6. This Guarantee is without prejudice to and in addition to any other security of securities held or which may be held by the GoS.
7. The giving or granting of time or any extension thereof to the Guarantor or the Developer or the neglect, commission or forbearance on the part of the GoS in requiring or enforcing payment of any moneys due hereunder or any other variations, modifications or amendments to the RFP or any other writing between the parties shall not in any way prejudice limit, restrict or affect this Guarantee and as between the Guarantor and the GoS the Guarantor shall be considered the principal debtor and not merely as surety for all the sums hereby guaranteed to be paid and which may become payable by the Guarantor to the GoS under these presents.
8. In case any part of this Guarantee is held, declared or rendered illegal, invalid or inoperative for any reason whatsoever, such holding or declaration shall not in any way affect or prejudice the validity and enforceability of any other part which shall be separable there from.
9. The benefit of this Guarantee shall ensure to the GoS's successors and assigns and shall be irrevocable until discharge by the Guarantor of their obligation as herein provided.
10. The GoS shall be entitled to proceed against the Guarantor without making the Developer a party to such proceedings.

Date

Place



Schedule R Details of Project Site

The Project starts near Jherruck, which is a small village, about 48 kms south of Jamshoro, on National Highway N-5. The project is also in close proximity with Kanghar lake, an enormously visited tourist spot, as well as a birds sanctuary.

The length of road in the project is about 25 kms, excluding the bridge over river Indus, which is approximately 1 km in length. Throughout its length, the road passes through minor canals/distributaries.

From start point till river Indus, the road length is about 2.5 kms, which mainly traverses through un-cultivated land. This stretch is mainly barren in nature, with no residential or agricultural activity found in this area.

After passing over river Indus, the road length is about 22.5 kms, which ends on Tando Mohammad Khan – Mir Bathoro Road. Just after crossing river Indus, the road passes near a natural depression which holds water, called as Dhand. This section is mainly of agricultural nature, but a small section passes through un-cultivated area as well. Small number of mud houses are also found along the project road.

The villages/areas which lie near the project area are: Katiar, Char, Bannu, M. K. Katiar etc. With the construction of project, it will vastly improve the access over the two ends of river Indus.



Schedule S TORs of the GoS Project Manager



Schedule T Safety Requirements

Layout plans showing the detailed proposals of temporary diversions to be carried out by the contractor shall be submitted to the independent engineer and to concerned district police and civil agencies for their written approval 10 days before the implantation date.

Diversions must be constructed in advance of any interference with in the existing carriage way and shall be maintained in accordance to traffic load in a condition satisfactory to Independent Engineer.

Moreover, it will be provided by the developer duly recommended by Independent Engineer and approved by GoS.



Schedule U List of Tests

The Developer shall furnish the laboratory testing facility with testing equipment, services, supplies, attendants, furniture and its running and maintenance cost for the tests to be conducted. The Developer shall also furnish the laboratory with a vehicle with driver to be approved by the Independent Engineer for the sole use of the laboratory to transport testing equipments, testing samples and laboratory technicians, for carrying out inspection and testing on site throughout the Project period.

All tests shall be executed as per the designated standard and all required equipments for facilitation of the tests should be furnished in the lab with two sets of latest edition of prescribed standards. (one to be placed in the laboratory and other in the Independent Engineer office)

A) Laboratory Tests

The Laboratory shall be equipped to perform the following tests:

SR. NO.	TESTS	AASHTO DESIGNATION
1	Dry preparation of soil samples	T-87
2	Soil Classification	M-145
3	Determination of Moisture Content	T-265
4	Atterberg Limits	T-89 & 90
5	Moisture density relationship (Modified Method)	T-180
6	C.B.R Test and swelling test	T-193
7	Relative Density Test	ASTM D4253, D4254
8	Sieve Analysis of Soils, aggregate and Mineral Filler	T-88, T-27 & T-37
9	Los Angeles Abrasion test of aggregates	T-96
10	Sand Equivalent	T-176
11	Soundness of aggregates	T-104
12	Asphalt Coating	T-195
13	Coating and stripping of Bitumen Aggregate	T-182
14	Specific Gravity & Absorption of Coarse Aggregate	T-85
15	Specific Gravity and Absorption of Fine Aggregate	T-84
16	Penetration of bitumen material	T-49
17	Amount of Passing No. 200 sieve	T-11
18	Quantitative Extraction of Bitumen from Mixtures	T-164
19	Gradation analysis of bitumen extracted aggregates	T-30
20	Specific gravity of compacted bitumen mixture	T-166
21	Marshall test and loss in stability	T-245
22	Maximum specific gravity of bitumen paving mixture	T-209
23	Air voids in compacted paving bitumen mix	T-269
24	Specific gravity of bitumen material	T-228
25	Softening point of bitumen (Ring and Ball method)	T-53
26	Sampling aggregates	T-2



SR. NO.	TESTS	AASHTO DESIGNATION
27	Fineness Modulus	T-27
28	Organic impurities	T-21
29	Mortar Strength	T-71
30	Friable particles	T-112
31	Potential reactivity of carbonate rocks for concrete aggregates (rock-Cylinder method)	ASTM C-586
32	Unit weight of aggregates	T-19
33	Air content of freshly mixed concrete by volumetric method	T-196
34	Making and curing of concrete test specimens	T-126
35	Curing concrete compressive test specimens	T-23
36	Compressive strength of cylinder concrete specimens	T-22
37	Setting time and consistency of cement	T-131
38	Normal consistency of hydraulic cement	T-129

B) Field Tests:

The following tests will be carried out for field control/spot checking purposes as the Works proceeds:-

Sr. No.	Test	AASHTO DESIGNATION
1	In-place density by Sand Cone Method	T-191
2	Sampling fresh concrete	T-141
3	Slump of Portland cement concrete	T-119
4	Sampling bituminous materials	T-40
5	Determining the temp. of bituminous paving mixtures	-
6	Determining Degree of Pavement Compaction by coring	T-230
7	Bulk specific gravity	T-166
8	Density of soil and soil aggregate by Nuclear methods	T-238
9	Moisture content of soil and soil aggregate by Nuclear method	T-239



Schedule V Standard Form Substitution Agreement

THIS SUBSTITUTION AGREEMENT is made at [●] on this [●] day of [●], [●].

By and between

2. **WORKS AND SERVICES DEPARTMENT, GOVERNMENT OF SINDH**, having its offices at 3rd Floor, Sindh Secretariat, Karachi acting through Secretary to Government of Sindh, Works and Services Department (hereinafter referred to as the **"GOS"**);
3. [●], a [●] company incorporated under the laws of Pakistan, having its registered office at [●] (hereinafter referred to as the **"Outgoing Concessionaire"**, which expression shall, where the context so permits, be deemed to mean and include its successors-in-interest and permitted assigns).
2. [●], a [●] company incorporated under the laws of Pakistan, having its registered office at [●] (hereinafter referred to as the **"Incoming Concessionaire"**, which expression shall, where the context so permits, be deemed to mean and include its successors-in-interest and permitted assigns).

(the GOS, the Outgoing Concessionaire the Incoming Concessionaire are hereinafter collectively referred to as the **"Parties"**)

WHEREAS:

- a. The GOS and the Outgoing Concessionaire have entered into a Concession Agreement dated [●] ("Concession Agreement") to design, rehabilitate construct and develop, through Public Private Partnership on a design, build, finance, operate and transfer ("DBFOT") basis the bridge connecting National Highway (Jhirk side) to Tandu Muhammad Khan over the river Indus ("Project");
- b. As permitted under the terms of the Concession Agreement, the Outgoing Concessionaire is desirous of transferring by way of substitution its rights and obligations in respect of the Project as set out herein.
- c. The Incoming Concessionaire has agreed that it shall assume the obligations and acquire the rights and benefits of the Outgoing Concessionaire existing under the Concession Agreement to the extent agreed under this Substitution Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, this Substitution Agreement witnesseth and it is hereby agreed by and between the parties as under:

1. The Outgoing Concessionaire hereby transfers to the Incoming Concessionaire all its right and obligations under the Concession Agreement to the Incoming Concessionaire and that the Incoming Concessionaire accepts such transfer.



2. The Incoming Concessionaire shall upon the signing of this Substitution Agreement (hereinafter referred to as the “**Effective Date**”) enjoy all the rights and benefits of and be subject to all the obligations of the Outgoing Concessionaire under the Concession Agreement arising on or after the Effective Date.
3. In terms of this Substitution Agreement, the Incoming Concessionaire has acquired the Outgoing Concessionaire’s right to receive from the GOS all amounts payable to the Customer to the Outgoing Concessionaire, under the Concession Agreement.
4. With effect from the Effective Date, the GOS hereby releases the Outgoing Concessionaire from its obligations under the Concession Agreement;
5. The GOS hereby consents to the substitution of the Incoming Concessionaire for the Outgoing Concessionaire as a party to the Concession Agreement as and from the Effective Date pursuant to the provisions of this Substitution Agreement.
6. The Incoming Concessionaire has acquired and obligations of the rights of the Outgoing Concessionaire under the Concession Agreement and from the Effective Date, the Incoming Concessionaire shall have the same rights, benefits and obligations under the Concession Agreement as the Outgoing Concessionaire.
7. Each party hereto represents and warrants to the others that: (i) it has necessary corporate power and authority to enter into this Substitution Agreement; and (ii) this Substitution Agreement is enforceable against it in accordance with its terms.
8. This Substitution Agreement shall be governed by and construed in accordance with the laws of Pakistan.
9. No amendment, modification, addition or other change to this Substitution Agreement shall be effective or binding on any party unless consented to in writing by all the parties.
10. All capitalized terms used herein, unless herein specifically defined shall have the same meaning as provided in the Concession Agreement.

IN WITNESS WHEREOF, the Parties hereto have signed this Substitution Agreement on the day, month and year herein above first written.

[execution page to be inserted prior to execution]



Schedule W Vesting Certificate

- d. The Works and Services Department, Government of Sindh, having its offices at 3rd Floor, Sindh Secretariat, Karachi acting through Secretary to Government of Sindh, Works and Services Department (“GOS”) refers to the Concession Agreement dated [●] (“Concession Agreement”) entered into between the GOS and [●], a [●] company incorporated under the laws of Pakistan, having its registered office at [●] (hereinafter referred to as the “Concessionaire”, which expression shall, where the context so permits, be deemed to mean and include its successors-in-interest and permitted assigns) (“Concessionaire”) to design, rehabilitate construct and develop, through Public Private Partnership on a design, build, finance, operate and transfer (“DBFOT”) basis the bridge connecting National Highway (Jhirk side) to Tando Muhammad Khan Bathoro Road over the river Indus (“Project”);
- e. The GOS acknowledges the compliance and fulfillment by the Concessionaire of the Divestment Requirements set forth in Article 24 of the Concession Agreement on the basis that upon issue of this Vesting Certificate, the GOS shall be deemed to have acquired, and all title and interest of the Concessionaire in or about the Project shall be deemed to have vested unto the GOS, free from any encumbrances, charges and liens whatsoever.

Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Concessionaire to rectify and remedy any defect or deficiency in any of the Divestment Requirements and/or relieving the Concessionaire in any manner of the same.

Signed this day of, 2011 at Karachi.

For and on behalf of
Works and Services Department, Government
of Sindh

Signature

Name

Designation

Signed in the presence of the following witnesses:

Signature

Signature



Name

Name

NIC No.

NIC No.

Accepted by for and on behalf of the
Concessionaire

Signature

Name

Designation

Signed in the presence of the following witnesses:

Signature

Signature

Name

Name

NIC No.

NIC No.



Schedule X Details for Notices

S.n.	Party	Attention	Address	Telephone	Fax	Email Address
1.	GOS					
2.	Concessionaire					



Schedule Y Project Account and Project Proceed Routing Details

To be prepared in accordance to the financing agreements at the time of financial close

